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TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture

PART 9—PRICE SUPPORT OF AGRICULTURAL COMMODITIES

SUPPORT PRICE FOR HOGS

Based upon the September 15, 1947, parity for hogs, the following provision is hereby substituted for the corresponding provision relating to the level and period of support of hogs in announcements heretofore made:

§ 9.1 *Hogs.* The support price for good and choice barrow and gilt butcher hogs for the period October 1, 1947, through March 31, 1948, shall average, on an annual basis with seasonal variations, \$16.15 per hundred pounds at Chicago with appropriate differentials for other markets. (Sec. 4 (a) 55 Stat. 498, as amended, 15 U. S. C., Sup., 713a-8)

Done at Washington, D. C., this 3d day of November 1947.

[SEAL] CLINTON P. ANDERSON,
Secretary of Agriculture.

[F. R. Doc. 47-9906; Filed, Nov. 6, 1947;
8:49 a. m.]

Chapter I—Production and Marketing Administration (Standards, Inspection, Marketing Practices)

PART 51—FRUITS, VEGETABLES AND OTHER PRODUCTS (GRADING, CERTIFICATION AND STANDARDS)

UNITED STATES STANDARDS FOR POTATOES

On September 20, 1947, notice of proposed rule making was published in the FEDERAL REGISTER (12 F. R. 6296) regarding the proposed issuance of United States Consumer Standards for Potatoes. After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice, the following United States Consumer Standards for Potatoes are hereby promulgated pursuant to the provisions of the Department of Agriculture Appropriation Act, 1948 (Pub. Law 266, 80th Cong., 1st Sess., approved July 30, 1947)

§ 51.367 *Consumer standards for potatoes—(a) Grades—(1) U. S. Grade A Small: U. S. Grade A Medium. U. S. Grade A Medium to Large: U. S. Grade A Large.* Potatoes of each of these grades shall be of one variety or similar varietal characteristics which are fairly well shaped, fairly clean, free from freezing injury, blackheart, late blight, and soft rot or wet breakdown, and from damage caused by sunburn, second growth, growth cracks, air cracks, hollow heart, internal discoloration, cuts, shriveling, sprouting, scab, dry rot, Rhizoctonia, other diseases, wireworm, other insects, or mechanical or other means. Potatoes of these grades shall also be mature: *Provided*, That potatoes which are not mature and the outer skin loosens or "feathers" readily under the usual handling practices need not meet this requirement if they are firm and are further designated as "Early" in connection with the grade, as for example "U. S. Grade A Medium-Early." Potatoes on the shown face shall be reasonably representative in size and quality of the contents of the container. (See Size range requirements.)

(1) *Tolerances.* Incident to proper grading and handling, except for the tolerances for size, not more than a total of 5 percent, by weight, of the potatoes in any lot may fail to meet the requirements of the grade, including not more than 1 percent for potatoes affected by soft rot or wet breakdown. (See Application of tolerances.)

(2) *U. S. Grade B Small: U. S. Grade B Medium. U. S. Grade B Medium to Large: U. S. Grade B Large.* Potatoes of each of these grades shall meet the requirements for U. S. Grade A Small; U. S. Grade A Medium; U. S. Grade A Medium to Large; and U. S. Grade A Large, except for the increased tolerance for defects specified below. (See Size range requirements.)

(3) *Tolerances.* Incident to proper grading and handling, except for the tolerances for size, not more than a total of 20 percent, by weight, of the potatoes in any lot may fail to meet the requirements of the grade, but not more than 5 percent shall be allowed for potatoes which are seriously damaged by any cause, including not more than 1 percent for potatoes affected by soft rot or wet

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breakdown. (See Application of tolerances.)

(3) *Size range requirements.* In addition to the quality requirements specified for the above grades, potatoes shall also meet the requirements for minimum and maximum diameter or weight, and the tolerance as specified for the various grades in the table appearing in this subparagraph. Potatoes specified as meeting one of the grades may be of any size within its size range requirement, except that it is not permissible

to specify a lot as "U. S. Grade A Medium to Large," or "U. S. Grade B Medium to Large," unless more than 15 percent, by weight, of the potatoes are larger than the maximum size required for U. S. Grade A Medium, or U. S. Grade

B Medium, respectively. For example, a lot of round or intermediate shaped potatoes to be specified as "U. S. Grade A Medium to Large" must have more than 15 percent, by weight, of potatoes from 3 to 4 inches in diameter.

Grades	Size range requirements, round or intermediate shaped varieties		Tolerance for size	
	Minimum diameter	Maximum diameter	Under-size	Over-size
U. S. Grades A & B small	1 1/4 inches	2 1/4 inches	3	15
U. S. Grades A & B medium	2 1/4 inches	3	5	15
U. S. Grades A & B medium to large	2 3/4 inches	4	5	15
U. S. Grades A & B large	3	4	5	15

Grades	Size range requirements, long varieties		Tolerance for size	
	Minimum diam. or wt.	Maximum weight	Under-size	Over-size
U. S. Grades A & B small	1 1/4 inches	4 ounces	3	15
U. S. Grades A & B medium	4 ounces	10	5	15
U. S. Grades A & B medium to large	4 ounces	16	5	15
U. S. Grades A & B large	10 ounces	16	5	15

(b) *Off-Grade potatoes.* Potatoes which fail to meet the requirements of any of the foregoing grades shall be Off-Grade potatoes.

(c) *Application of tolerances to individual containers.* Based on sample inspection, the contents of individual containers in the lot are subject to the following limitations: *Provided*, That the averages for the entire lot are within the tolerances specified for the grade:

(1) When a tolerance is 10 percent or more, not more than one-tenth of the individual containers in any lot may contain more than one and one-half times the tolerance specified, except that at least one defective and one off-sized specimen may be permitted in a container.

(2) When a tolerance is less than 10 percent, not more than one-tenth of the individual containers in any lot may contain more than double the tolerance specified, but no package may contain more than four times the tolerance for soft rot or wet breakdown, except that at least one defective and one off-sized specimen may be permitted in a container.

(d) *Definitions.* (i) "Fairly well shaped" means that the appearance of the individual potato or the general appearance of the potatoes in the container is not materially injured by pointed, dumbbell-shaped or otherwise ill-formed potatoes.

(2) "Fairly clean" means that from the viewpoint of general appearance, the potatoes in the container are reasonably free from dirt or other foreign matter, and that individual potatoes are not materially caked with dirt or materially stained.

(3) "Soft rot or wet breakdown" means any soft, mushy, or leaky condition of the tissue such as slimy soft rot, leak, or wet breakdown following freezing injury, scald, or other injury.

(4) "Damage" means any injury or defect which materially injures the edible

or shipping quality, or the appearance of the individual potato or the general appearance of the potatoes in the container, or which cannot be removed without a loss of more than 5 percent of the total weight of the potato including peel covering defective area. Loss of outer skin (epidermis) shall not be considered as damage when the potatoes are designated as "Early" unless the skinned surface is materially affected by dark discoloration. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(i) Second growth or growth cracks which have developed to such an extent as to materially injure the appearance of the individual potato or the general appearance of the potatoes in the container.

(ii) Air cracks which are deep, or shallow air cracks which materially injure the appearance of the individual potato or the general appearance of the potatoes in the container.

(iii) Shriveling, when the potato is more than moderately shriveled, spongy, or flabby.

(iv) Sprouting, when the sprouts are not dried and are more than one-half inch long.

(v) Surface scab which covers an area of more than 5 percent of the surface of the potato in the aggregate.

(vi) Pitted scab which affects the appearance of the potato to a greater extent than the amount of surface scab permitted or causes a loss of more than 5 percent of the total weight of the potato including peel covering defective area.

(vii) Rhizoctonia, when the general appearance of the potatoes in the container is materially injured or when individual potatoes are badly infected.

(viii) Wireworm, grass root or similar injury, when any hole on potatoes ranging in size from 6 to 8 ounces is longer

than three-fourths inch, or when the aggregate length of all holes is more than one and one-fourth inches; smaller potatoes shall have lesser amounts and larger potatoes may have greater amounts, provided, that the removal of the injury by proper trimming does not cause the appearance of such potatoes to be injured to a greater extent than that caused by the proper trimming of such injury permitted on a 6 to 8 ounce potato.

(5) "Internal discoloration" means discoloration such as is caused by net necrosis or any other type of necrosis, stem-end browning, internal brown spot, or other similar types of discoloration not visible externally.

(6) "Mature" means that the outer skin (epidermis) does not loosen or "feather" readily during the ordinary methods of handling.

(7) "Serious damage" means any injury or defect which seriously injures the edible or shipping quality, or the appearance of the individual potato or the general appearance of the potatoes in the container, or which cannot be removed without a loss of more than 10 percent of the total weight of the potato including peel covering defective area. Any one of the following defects or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect shall be considered as serious damage:

(i) Fairly smooth cuts such as are made by the digger, or by a knife to remove injury when both ends are clipped, or when more than an estimated one-fourth of the potato is cut away, or, in the case of long varieties, when the remaining portion of the clipped potato weighs less than 6 ounces; irregular types of cuts which seriously affect the appearance of the individual potato, or which cannot be removed without a loss of more than 10 percent of the total weight of the potato including peel covering defective area.

(ii) Shriveling, when the potato is excessively shriveled, spongy, or flabby.

(iii) Surface scab which covers an area of more than 50 percent of the surface of the potato in the aggregate.

(iv) Pitted scab which affects the appearance of the potato to a greater extent than the amount of surface scab permitted or causes a loss of more than 10 percent of the total weight of the potato including peel covering defective area.

(v) Wireworm, grass root or similar injury, when any hole on potatoes ranging in size from 6 to 8 ounces is longer than one and one-fourth inches, or when the aggregate length of all holes is more than two inches; smaller potatoes shall have lesser amounts and larger potatoes may have greater amounts; *Provided*, That the removal of the injury by proper trimming, does not cause the appearance of such potatoes to be injured to a greater extent than that caused by the proper trimming of such injury permitted on a 6 to 8 ounce potato.

(8) "Diameter" means the greatest dimension at right angles to the longitudinal axis. The long axis shall be used without regard to the position of the stem (rhizome).

(e) *Effective time.* The United States Consumer Standards for Potatoes contained in this section shall become effective thirty (30) days after the date of publication of these standards in the FEDERAL REGISTER. (Pub. Law 266, 80th Cong., 11 F. R. 7713)

Done at Washington, D. C., this 3d day of November 1947.

[SEAL] RALPH S. TRIGG,
Deputy Administrator Production and Marketing Administration.

[F. R. Doc. 47-9936; Filed, Nov. 6, 1947; 8:49 a. m.]

Chapter XXI—Organization, Functions and Procedure

Subchapter C—Production and Marketing Administration

LABOR CENTERS, HOMES, CAMPS AND FACILITIES

DELEGATION OF AUTHORITY TO EFFECT LIQUIDATION

Pursuant to the authority vested in me by the Secretary of Agriculture; *It is hereby ordered.*

Effective immediately there is hereby transferred to the Labor Camp Disposal Officer, Office of the Administrator, Production and Marketing Administration, all the authorities, powers, functions and duties vested in me by the Secretary to dispose of as provided in the Farmers' Home Administration Act of 1946, as amended (Pub. Law No. 731, 79th Cong. 2d sess., approved August 14, 1946, 60 Stat. 1062; Pub. Law No. 40, 80th Cong., 1st sess., approved April 28, 1947) and in Pub. Law 298, 80th Cong., approved July 31, 1947, all labor supply centers, labor homes, labor camps, and facilities formerly under the supervision or administration of the Farm Security Administration and transferred or made available to the War Food Administrator for use in the farm labor supply program pursuant to Pub. Law No. 45, 78th Cong. 1st sess., approved April 29, 1943 (57 Stat. 70) and in the custody or under the control of the Production and Marketing Administration on August 12, 1947, all similar centers, homes, camps, and facilities constructed or acquired by the War Food Administrator or the Department of Agriculture pursuant to subsequent similar laws or otherwise and used in the farm labor supply program, and any equipment pertaining thereto or used in the farm labor supply program; *Provided*, The Labor Camp Disposal Officer shall not dispose of any standard camp without the prior approval of the Administrator.

In his discretion, the Labor Camp Disposal Officer may redelegate, upon such terms and conditions as he may prescribe, the powers and authorities conferred upon him. In his absence, or in the event of his disability, such powers and authorities may be exercised by the Acting Labor Camp Disposal Officer.

The exercise of authorities delegated herein shall be subject to the limitations and requirements of regulations of the

Department of Agriculture, except insofar as they have been modified in their applicability to the Farm Security Administration.

This order revokes the order of the Acting Administrator, Production and Marketing Administration, issued on August 12, 1947 (12 F. R. 5519)

(R. S. 161, 60 Stat. 1062, Pub. Laws 40, 298, 80th Cong., 5 U. S. C. 22; 12 F. R. 6593)

Done at Washington, D. C., this 3d day of November 1947.

[SEAL] RALPH S. TRIGG,
Deputy Administrator Production and Marketing Administration.

[F. R. Doc. 47-9932; Filed, Nov. 6, 1947; 8:48 a. m.]

PART 2327—LABOR BRANCH DELEGATION OF AUTHORITY

CROSS REFERENCE: For order affecting § 2327.4, see Federal Register Document 47-9932, *supra*, which transfers certain authority to effect liquidation of labor centers, homes, camps, and facilities, to the Labor Camp Disposal Officer, Office of the Administrator, Production and Marketing Administration.

TITLE 25—INDIANS

Chapter I—Office of Indian Affairs, Department of the Interior

Subchapter I—Irrigation Projects: Operation and Maintenance

PART 130—ORDERS FIXING OPERATION AND MAINTENANCE CHARGES

AHTANUM INDIAN IRRIGATION PROJECT, WASHINGTON

OCTOBER 31, 1947.

On September 18, 1947 notice of intention to amend § 130.1 was published in the daily issue of the FEDERAL REGISTER (12 F. R. 6260) Interested persons were thereby given opportunity to participate in the preparing of the amendments by submitting data or arguments within 30 days from the date of publication of the notice. No communications, written or oral, having been received within the prescribed period, the said section is hereby amended and promulgated as follows:

§ 130.1 *Charges.* Pursuant to the provisions of the acts of August 1, 1914 and March 7, 1928 (38 Stat. 583 and 45 Stat. 210; 25 U. S. C. 385, 387) the operation and maintenance charges on lands of the Ahtanum Indian Irrigation Project, Yakima Indian Reservation, Washington, for the calendar year 1948 and subsequent years until further notice, are hereby fixed at \$1.50 per acre per annum for each irrigable acre of land to which water can be delivered from the project works.

E. MORGAN PRYSE,
District Director

[F. R. Doc. 47-9918; Filed, Nov. 6, 1947; 8:56 a. m.]

PART 130—ORDERS FIXING OPERATION AND MAINTENANCE CHARGES

TOPPENISH-SIMCOE INDIAN IRRIGATION PROJECT, WASHINGTON

OCTOBER 31, 1947.

On September 18, 1947, notice of intention to amend § 130.73 was published in the daily issue of the FEDERAL REGISTER (12 F. R. 6260) Interested persons were thereby given opportunity to participate in the preparing of the amendments by submitting data or arguments within 30 days from the date of publication of the notice. No communications, written or oral, having been received within the prescribed period, the said section is hereby amended and promulgated as follows:

§ 130.73 *Charges.* Pursuant to the provisions of the acts of August 1, 1914, and March 7, 1928 (38 Stat. 583; and 45 Stat. 210; 25 U. S. C. 385, 387), the operation and maintenance charges for the lands under the Toppenish-Simcoe Project, Washington, for the calendar year 1948 and subsequent years until further notice, are hereby fixed at the cost per acre shown as follows:

All lands for which application for water is made and approved by Project Engineer,
per acre----- \$1.00

E. MORGAN PRYSE,
District Director

[F. R. Doc. 47-9920; Filed, Nov. 6, 1947; 8:56 a. m.]

PART 130—ORDERS FIXING OPERATION AND MAINTENANCE CHARGES

WAPATO INDIAN IRRIGATION PROJECT, WASHINGTON

On September 18, 1947 notice of intention to amend § 130.86 was published in the daily issue of the FEDERAL REGISTER (12 F. R. 6260) Interested persons were thereby given opportunity to participate in the preparing of the amendments by submitting data or arguments within 30 days from the date of publication of the notice. No communications, written or oral, having been received within the prescribed period, the said section is hereby amended and promulgated as follows:

§ 130.86 *Charges.* Pursuant to the provisions of the acts of August 1, 1914 and March 7, 1928 (38 Stat. 583, 45 Stat. 210; 25 U. S. C. 385, 387) the operation and maintenance charges on assessable lands under the Wapato Indian Irrigation Project, Yakima Indian Reservation, Washington, for the calendar year 1948 and subsequent years until further notice, are hereby fixed as follows:

- (a) *Minimum charges.* For all tracts in noncontiguous single ownership... \$5.00
- (b) *Flat rate.* Upon all farm units or tracts, for each assessable acre----- 2.50
- (c) *Storage operation and maintenance.* For all lands with a storage water right, known as "B" lands, in addition to other charges per acre... .30

E. MORGAN PRYSE,
District Director

[F. R. Doc. 47-9919; Filed, Nov. 6, 1947; 8:56 a. m.]

TITLE 29—LABOR**Chapter V—Wage and Hour Division,
Department of Labor****PART 545—HOMWORKERS IN THE NEEDLE-
WORK INDUSTRIES IN PUERTO RICO****ENFORCEMENT POLICIES**

§ 545.100 *Enforcement policies.*¹ The following policies will guide the administration and enforcement of the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060; 29 U. S. C. 201, et seq.) with respect to piece-rate payments to homeworkers in Puerto Rico:

(a) No employer shall make any deduction from a homemaker's earnings for the value of materials which have been lost, destroyed, or damaged.

(b) Every employer shall make full piece-rate payments for all work which has been satisfactorily performed and returned to the employer, regardless of whether the goods themselves have been soiled or otherwise damaged.

(c) No employer shall be required to pay the homemaker for any work which may have been done on goods which have been lost, destroyed, or for some other reason not returned to the employer.

(d) The employer shall have the right to request the homemaker to re-do work which has been improperly executed without having to pay the piece rate more than once.

(e) If the homemaker refuses to re-do improperly executed work, the employer shall be required to pay for only such portions of the work as have been satisfactorily performed.

(f) If the homemaker disagrees with the decision of the employer that the work has not been properly executed, the employer shall immediately pay for all work within the lot which has been satisfactorily performed and shall within one week refer the case to the Mayaguez Office of the Wage and Hour Division for a determination as to the payment to be made under the criteria set forth in paragraphs (b) and (e) of this section. In referring the case to that office, the employer (or his authorized representative) shall, either in person or by mail, submit the goods on which he proposes to withhold any part of the piece-rate payments together with an explanation of the amount of wages which he proposes to withhold and the reasons and justification therefor. The Mayaguez Office of the Wage and Hour Division is located in the United States Post Office Building, Post Office Box No. 733, Mayaguez, Puerto Rico.

The above policies will be enforced with respect to work done on goods distributed to home workers on and after December 8, 1947. (Sec. 12, 60 Stat. 244; 5 U. S. C., Supp., 1011)

Signed this 29th day of October 1947 at Washington, D. C.

WM. R. McCOMB,
Administrator.

[F. R. Doc. 47-9916; Filed, Nov. 6, 1947; 8:50 a. m.]

¹ The enforcement policy contained in this section applies to homework in any industry in Puerto Rico. It is applicable to homeworkers covered by Part 681 of this chapter as well as to those covered by Part 545.

**PART 681—HOME WORKERS IN INDUSTRIES
IN PUERTO RICO OTHER THAN NEEDLE-
WORK INDUSTRIES****ENFORCEMENT POLICIES**

CROSS REFERENCE: For enforcement policies of home workers in the needle-work industries in Puerto Rico, see Part 545 of this chapter, *supra*.

TITLE 30—MINERAL RESOURCES**Chapter I—Bureau of Mines,
Department of the Interior****Subchapter E—Electrical Equipment, Lamps,
Methane Detectors; Tests for Permissibility;
Fees****PART 18—JUNCTION BOXES AND ELECTRIC
MOTOR-DRIVEN MINE EQUIPMENT****MISCELLANEOUS AMENDMENTS**

Some of the amendments to this part are mere changes in rules of agency procedure. The amendments in substance to this part are for the benefit of safety in coal mines and should become effective immediately to avoid accidents or loss of life. Actual notice of the proposed amendments was given to practically all manufacturers and users of the equipment affected and their comments and suggestions invited and in many cases received. For these reasons the notice and procedures prescribed by section 4 of the Administrative Procedure Act (Public Law 404, 78th Cong.) are impracticable, unnecessary, and contrary to the public interest; and these amendments shall become effective as of the date of their approval by the Secretary of the Interior.

1. In § 18.2, paragraph (a) (3) (v) the introductory text of (a) (4), paragraph (a) (4) (ii) and paragraph (a) (4) (v) (b) are amended; the twelfth undesignated paragraph of paragraph (b) (8) is amended; the first paragraph of paragraph (b) (10) is amended, and a new second paragraph is added to paragraph (b) (10), as follows:

§ 18.2 *Conditions under which approvals may be granted—(a) Preliminary steps.* * * *

(3) *Fees charged.* * * *

(v) Tests of portable cable.

(a) Run-over tests (complete) \$25.00.

(b) Development run-over tests will be charged for at the rate of \$2.50 for each five runs over the cable, with a minimum charge of \$5.00.

(c) Flame-resistance tests (complete) \$15.00.

(d) Development flame-resistance tests will be charged for at the rate of \$3.00 per test sample, with a minimum charge of \$9.00.

(4) *Drawings and specifications required.* The Bureau will not undertake the inspection and test of equipment until a set of legible drawings, bill of material, and specifications sufficient in number and detail to identify the parts fully have been delivered to the Supervising Engineer, Electrical-Mechanical Section, at the Central Experiment Station. The nature of the drawings and specifications required is described in subsequent paragraphs of this section. No drawings or specifications should be sent to the Washington Office of the Bu-

reau. Drawings should be numbered and dated to facilitate identification and reference in records. The complete rating of each motor shall be specified, and the capacity of all fuses and the setting of overload protective devices shall be given. All drawings are to be handled as strictly confidential by the Bureau.

The set of drawings shall include the following:

(ii) A drawing or drawings that shall specify the material and detailed dimensions of all parts that make up explosion-proof enclosures for units included under Class I, § 18.2 (b) (1) also of those parts that form any portion of the joints through which possible flames might escape. Upon request, the manufacturer shall specify the material and dimensions for such other parts as the Bureau considers necessary for proper record.

(v) The following exception is made concerning the type of drawings required for squirrel-cage induction motors:

(b) If full detailed dimensions are not given for all parts, this drawing (or drawings) may show the assembled motor in section, *Provided*, The section or sections show the parts in their correct proportions and location with respect to each other. A skeleton drawing shall not cover more than one motor-frame diameter. It is recommended that information covering the ratings, range of voltages, speeds, and frequencies for which the motor will be available in this frame be included on the skeleton drawing. Each frame shall have a suitable designation for purposes of reference and identification.

(b) *General requirements.* * * *

(8) *Grounding.* * * *

When the grounding conductor is one of several making up a portable cable or a connecting cable, the size (cross-sectional area) of the grounding conductor (or conductors) shall be determined in accordance with the following:

(i) If the size of the power conductor is No. 6 or larger, the cross-sectional area of the grounding conductor shall not be less than 50 percent of that of the power conductor, except that in no case shall the grounding conductor be less than No. 8.

(ii) If the size of the power conductor is smaller than No. 6, the cross-sectional area of the grounding conductor shall not be less than that of the power conductor.

(10) *Portable cables.* Every machine operated from an external source of power shall have a portable cable of adequate length and current-carrying capacity. This cable shall have an outer sheath of rubber or equivalent material that is highly resistant to abrasion, moisture, and flame. The cable shall meet the flame resistance test outlined in § 18.6 (c). The conductors shall have high-grade insulation of rubber or its equivalent. The use of colored insulation or other suitable markers is recommended for identifying individual conductors to facilitate proper connections and splicing according to polarity. The

number of conductors in the portable cable should be kept to the minimum necessary for feasible operation of the machine.

Suitable provision shall be made to facilitate disconnection of portable cables quickly and conveniently for replacement.

2. In § 18.3, the second undesignated paragraph of paragraph (a) (2) paragraph (a) (7) (i) and the fourth undesignated paragraph of paragraph (b) (8) are amended, as follows:

§ 18.3 *Detailed requirements for Class 1 parts*—(a) *Enclosure casings.* * * *

(2) *Joints and machining tolerances.* * * *

The surfaces comprising a flange joint need not be all in one plane. For enclosures having an unoccupied volume (air space) of more than 60 cubic inches, the total width of joint measured along the shortest path from inside to outside of the enclosure shall not be less than 1 inch, except as follows: A rabbet joint having a total width of $\frac{3}{4}$ inch may be accepted if neither the cylindrical nor the plane fit is less than $\frac{1}{8}$ inch wide. If the unoccupied volume (air space) is 60 cubic inches or less, a minimum width of $\frac{3}{4}$ inch may be accepted for plane joints, but a 1-inch width of plane or rabbet joint is recommended. The diametrical clearance for cylindrical fits in rabbet joints shall not exceed 0.004 inch if the plane fit is less than $\frac{1}{4}$ inch wide. If the plane fit is $\frac{1}{4}$ inch or more in width, the diametrical clearance for cylindrical fits shall not exceed 0.008 inch. The edge of a rolled-steel plate forming part of an explosion-proof enclosure may be used as a plane flange, provided the width does not fall short of the previously specified flange widths by more than $\frac{1}{64}$ inch.

(7) *Lead entrances.* All electrical conductors that pass through the walls of explosion-proof enclosures shall be provided with adequate insulation and guards at the point of entrance to the enclosure in accordance with one or more of the following:

(i) If stuffing-box lead entrances are used, the packing material shall be untreated asbestos, such as woven valve-stem packing, and it shall be not less than $\frac{3}{16}$ inch in diameter. The size and kind shall be specified on the drawings or bills of material. The amount of packing material in each stuffing box shall be such that, when compressed, it will completely surround the wire or cable for not less than $\frac{1}{2}$ inch measured along the wire or cable.

The stuffing-box design and the amount of packing used shall be such that, with the packing properly compressed, the gland still has a clearance distance of $\frac{1}{8}$ inch or more to travel without meeting interference by parts other than packing. The glands shall be secured against loosening. The use of insulating bushings in stuffing boxes is recommended, especially for voltages that exceed 250. When an outer braid insulation covering is used on wires and

cables passing through stuffing boxes, it should be made of asbestos or slow-burning material.

The width of space for packing material shall not exceed the diameter or width of the uncompressed material by more than 50 percent. At other points small clearances shall be maintained between the stuffing-box parts and the cables or wires passing through them. A diametrical clearance greater than $\frac{1}{16}$ inch will not be accepted if packing material less than $\frac{1}{4}$ -inch diameter is used. If untreated, woven packing material of $\frac{1}{4}$ inch or greater nominal diameter is used, a diametrical clearance not greater than $\frac{1}{8}$ inch will be accepted.

To minimize deviation from acceptable clearances in stuffing boxes, the cables used in them should conform to the following standardized dimensions:

TWO-CONDUCTOR—ROUND CABLES

Cond. size A. W. G.	Single cond.	Con- cen- tric	Twisted	3- cond.	4- cond.	All toler- ance
	Inches	Inches	Inches	Inches	Inches	Inches
No. 8.....	0.44	0.65	0.81	0.91	0.99	±0.03
No. 6.....	.51	.77	.93	1.01	1.10	±.03
No. 5.....	.52	.80	1.01	1.10	1.19	±.03
No. 4.....	.57	.84	1.08	1.17	1.27	±.03
No. 3.....	.63	.89	1.17	1.24	1.34	±.03
No. 2.....	.66	.94	1.27	1.34	1.48	±.03
No. 1.....	.74	1.05	1.44	1.51	1.63	±.03
No. 1/0.....	.77	1.10	1.52	1.65	1.79	±.04
No. 2/0.....	.82	1.18	1.65	1.75	1.93	±.04
No. 3/0.....	.87	1.24	1.77	1.89	2.07	±.05
No. 4/0.....	.93	1.33	1.92	2.04	2.26	±.05

¹With (type G) or without (type W) grounding conductors.

Corners shall be well-rounded at all points where cables and wires emerge from bushings, glands, and stuffing boxes to prevent cutting of insulation. Stuffing boxes, if not made integral with enclosures, shall be securely held to enclosures on which they are used.

Stuffing boxes and the fittings connected to them shall be so placed or guarded that they are not likely to be damaged in derailments and other accidents.

(b) *Special requirements for Class 1 parts.* * * *

(8) *Distribution boxes.* * * *

Each branch circuit shall be plainly and permanently marked to show the maximum current that can be taken from it, and plugs that are not of identical rating shall be polarized or otherwise arranged to prevent inserting them in the wrong socket.

3. In § 18.6, paragraph (c) is amended and paragraph (d) is added, as follows:

§ 18.6. *Character of tests.* * * *

(c) *Portable cable run-over test.* The following run-over test has been established for determining the durability of portable cables for use with permissible equipment, and cables that pass this test will be listed for this service.

The cable will be placed across the two rails of a track and a four-wheeled car of 7 tons gross weight will be run over it 50 times. The speed of the car shall be approximately $3\frac{1}{2}$ miles per hour, and potential shall be applied to the cable during tests. The cable will be shifted after each passage of the car, thus giving

100 places in the cable over which two wheels have passed. If the cable fails by short-circuiting or grounding to the rails or wheels at 11 or more places, it will not be listed by the Bureau.

(d) *Portable cable flame resistance test.* The following test has been established for determining the flame-resistant properties of portable cables:

A 6-foot sample of the cable in the form of a closed U shall be mounted horizontally and heated electrically, using a current that is 500 percent of the following conductor ratings:

CONDUCTOR SIZE, A. W. G.													
14	12	10	8	6	4	3	2	1	0	00	000	0000	
CURRENT, AMPERES													
18	23	31	41	54	72	83	96	110	127	146	166	193	

This heating shall be continued until the temperature of the sheath between the adjacent legs of the sample is 350° F. The flame of a Tirrill gas burner adjusted to give an over-all free flame height of 5 inches and a 3-inch inner cone shall be applied directly underneath the sample at a point $3\frac{1}{2}$ inches from the terminal ends of the sheath for 60 seconds, the top of the burner being 3 inches below the lower surface of the sample.

With the gas flame and heating current cut off simultaneously, burning of the sheath shall not spread over more than 14 inches of the folded sample.

At least 5 samples of a given cable will be tested to determine its resistance to flame. If 4 of the 5 samples pass this test, the cable will be listed as "flame resistant" and shall be suitably marked at intervals not exceeding 12 feet with an identifying number assigned by the Bureau of Mines.

4. Section 18.7 is amended to read as follows:

§ 18.7 *Inspection and test of parts supplied by other manufacturers.* All the accessory parts for an approved machine need not be made by the manufacturer requesting the approval. If parts are obtained from other manufacturers, these accessories may be submitted for inspection and test, either by the builder of the permissible machine or directly by the manufacturer of the accessory. All the requirements to be met under either option are identical. Application for such inspection and test by an accessory manufacturer shall be made by a letter addressed to the Director, Bureau of Mines, Washington, D. C., and shall be accompanied by the required fee (see § 18.2 (a) (3)). When the accessory has successfully met all the requirements the Bureau, upon request, will give the manufacturer thereof a letter stating that further test or inspection of the accessory will not be required if it is constructed in strict accordance with the specifications on file at the Bureau. This letter may be cited to the builder of the complete approved machine. Since the Bureau of Mines does not sanction the words "permissible" or "approved" except as applying to complete assemblies,

advertising or labeling such accessories as permissible or approved by the Bureau will not be sanctioned. However, motors¹ may be advertised and labeled as explosion-proof and suitable for use on permissible assemblies. Such label shall not be used without prior written authorization from the Director. Authorization will be granted only upon request addressed to the Director providing the conditions applying thereto have been met. The label shall contain the following: "Explosion-Proof Mine Motor—Built to Bureau of Mines Schedule—Bureau of Mines File X/P -----." The Bureau will assign an identifying file number in the letter authorizing the use of a label. The label can be in the form of a separate plate or else combined with the standard motor nameplate. A sample of the plate adopted shall be sent to the Supervising Engineer, Electrical-Mechanical Section at the Central Experiment Station in Pittsburgh, Pa. The Bureau reserves the right to rescind for cause, at any time, any authorization granted under this section.

(37 Stat. 681, as amended by sec. 311, 47 Stat. 410; 30 U. S. C. 3, 5, 7, E. O. 6611, Feb. 22, 1934)

NOTE: Amendment to Schedule 2E, Director, approved by the Secretary of the Interior, October 21, 1947.

JAMES BOYD,
Director.

Approved: October 21, 1947.

C. GIRARD DAVIDSON,
Assistant Secretary of the Interior.

[F. R. Doc. 47-9900; Filed, Nov. 6, 1947;
8:52 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter II—National Guard and State Guard, Department of the Army

PART 201—NATIONAL GUARD REGULATIONS MISCELLANEOUS AMENDMENTS

Part 201, Chapter II, Title 32, Code of Federal Regulations is amended in the following respects:

1. The chapter headnote is amended as set forth above.

2. Paragraph (e) of § 201.1 is redesignated (f) and new paragraph (e) is added as follows:

§ 201.1 *Appointment.* * * *

(e) *Appointment of medical officers who are one grade higher than prescribed by applicable Tables of Organization and Equipment.* Vacancies for medical officers in the National Guard may be filled by assignment thereto of qualified individuals who are one grade higher than that specified by applicable Tables of Organization and Equipment, subject to the following provisions:

¹Under this amendment, authorization to advertise and label motors will be limited to those motors which are not combined with switches, resistors, starters, or other auxiliary apparatus.

(1) No officer is available in the proper grade, or one grade junior to that specified for the vacancy in question.

(2) The officer concerned has held the higher grade while on active duty or by virtue of an ORC appointment thereto.

(3) Officers so assigned will be in grades up to and including the grade of colonel, only.

(4) An officer so assigned will be replaced immediately upon availability of a qualified officer in the proper grade or one grade junior to that specified.

(f) *Oath of office.*

3. Paragraph (c) (1) (iii) (d) of § 201.2 is amended by deleting the period at the end of the sentence and adding the following clause: "except as indicated in paragraph (e) of § 201.1."

[NGR 20, Nov. 14, 1946, as amended by NGB Cir. 36, Oct. 9, 1947] (48 Stat. 155; 32 U. S. C. 4)

[SEAL] EDWARD F. WITSELL,
Major General,
The Adjutant General.

[F. R. Doc. 47-9901; Filed, Nov. 6, 1947;
8:52 a. m.]

TITLE 49—TRANSPORTATION AND RAILROADS

Chapter I—Interstate Commerce Commission

PART 0—ORGANIZATION AND ASSIGNMENT OF WORK

MISCELLANEOUS AMENDMENTS

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 13th day of October A. D. 1947.

Section 17 of the Interstate Commerce Act, as amended (49 U. S. C. 17), being under consideration; it is ordered that:

1. The fourteenth paragraph of § 0.3 *Assignment of duties to Divisions*, paragraph (b) *Division Two*, is amended by the substitution of a comma in lieu of the period following the word "tariffs," and the addition of "except formal complaints handled under shortened procedure in accordance with § 1.44 of this chapter."

That paragraph, as amended, will read:

Formal complaints and suspension cases in which the issues relate primarily and predominantly to the interpretation and application of tariffs, except formal complaints handled under shortened procedure in accordance with § 1.44 of this chapter.

2. The fifteenth paragraph of § 0.3 (c) *Division Three*, is amended by the substitution of "§ 1.44" in lieu of "§ 1.10a" and of a period in lieu of the comma following the word "chapter" and the deletion of the rest of the sentence, so that the amended paragraph will read:

Formal complaints handled under shortened procedure in accordance with § 1.44 of this chapter.

3. Section 0.6 *Assignment of duties to individual Commissioners*, is amended by the deletion of paragraph (a) reading as follows:

(a) *To the individual members of Divisions Two and Three.* In rotation, shortened procedure cases under § 1.10a of this chapter, submitted to Division Two or Division Three according to the assignment heretofore made.

Notice of this order shall be given to the general public by depositing a copy hereof in the office of the Secretary of the Commission at Washington, D. C., and by filing with the Director of the Division of the Federal Register.

(24 Stat. 385, as amended; 49 U. S. C. 17)

By the Commission.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 47-9303; Filed, Nov. 6, 1947;
8:53 a. m.]

PART 110—DESTRUCTION OF RECORDS

PART 115—DESTRUCTION OF RECORDS OF CARRIERS BY PIPE LINES

CANCELLATION AND REDESIGNATION

NOVEMBER 3, 1947.

By order dated November 25, 1942, (49 CFR, Cum. Supp., 115) the "Regulations to Govern the Destruction of Records of Carriers by Pipe Lines, Issue of 1943," were prescribed in lieu of similar regulations then in effect. Instead of following code numbers assigned to the superseded regulations in the First Edition of the Code of Federal Regulations, the revised regulations were issued as Part 115 of this title.

Notice is hereby given that Part 115 is canceled and the revised regulations are redesignated Subpart E "Pipe Line Companies" under Part 110 of this title. Without change in substance, the sections are renumbered as follows:

Section Nos. effective here-with	Section title	Superseded section Nos.
110.80	Regulations prescribed.	115.0
110.81	Authority to destroy certain records.	115.1
110.82	Preservation of other records.	115.2
110.83	Officer having supervision of destruction.	115.3
110.84	Written authority of officer having supervision of destruction.	115.4
110.85	Certificate of destruction.	115.5
110.86	Committee for destruction of certain records.	115.6
110.87	Method of destruction.	115.7
110.88	Accidental destruction of accounts, records, and memoranda.	115.8
110.89	Duplicate accounts, records, and memoranda.	115.9
110.90	List of accounts, records, and memoranda, and periods of retention.	115.10

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 47-9303; Filed, Nov. 6, 1947;
8:53 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

[P. & S. Docket No. 445]

MARKET AGENCIES AT FORT WORTH STOCK YARDS, FORT WORTH, TEX.

NOTICE OF PETITION FOR MODIFICATION

By a document filed October 24, 1947, the respondents seek to modify certain provisions of their tariff on the basis of which rates and charges are assessed and seek an increase in certain of the temporary rates and charges now being assessed by them at the Fort Worth Stock Yards, which are due to expire on December 31, 1947.

In their petition the respondents seek to add a new definition to Article I as follows: "Bulls are animals of the bovine species, weighed in drafts, averaging 800 pounds or over."

The respondents also seek authority to modify their tariff to provide for the following charges:

ARTICLE II

CATTLE AND CALVES

	Per head
Bulls: One head or more.....	\$1.25
Calves:	
Consignments of one head and one head only.....	60
Consignments of more than one head:	
First 15 head in each consignment.....	40
Each head over 15 in each consignment.....	.30
Cattle:	
Consignments of one head and one head only.....	1.00
Consignment of more than one head:	
First 15 head in each consignment.....	.90
Each head over 15 in each consignment.....	.80
Hogs:	
Consignments of one head and one head only.....	45
Consignments of more than one head:	
First 40 head in each consignment.....	.30
Each head over 40 in each consignment.....	.25
Sheep:	
Consignments of one head and one head only.....	40
Consignments of more than one head:	
First 10 head in each 300.....	.30
Next 50 head in each 300.....	.15
Next 60 head in each 300.....	.10
Next 130 head in each 300.....	.06
Next 50 head in each 300.....	.05

ARTICLE III

EXTRA SERVICE CHARGES

The following extra service charges are applicable:

On all sales and/or purchases were more than three (3) drafts are necessary or requested, a charge of 25¢ per draft in excess of three (3) shall be made: \$0.25.

For each additional check, each additional account sale, each proceeds deposit, or bank credit over one (1) per owner: \$0.05.

ARTICLE IV

(a) Breeding animals, other than those commonly known as stockers: 5% of each gross sale price, not to exceed \$5.00 per head.

(b) At exhibitions: Food animals, stocker, feeders, other than sorts sold on open market, per head:

Cattle and/or calves.....	\$1.00
Swine: Hogs-pigs.....	.60
Sheep and/or goats.....	.40

ARTICLE VI

For clearing out of stockyards livestock not consigned to or sold by clearing agency to party for whom cleared, one-third the charge as if purchased.

For the resale of any livestock purchased on the market and remaining in the stockyards, rates provided in Article II, will be assessed.

On livestock sold or purchased in the country to be weighed on the Fort Worth Stock Yards through market agency, the same commission charges will apply as though sold or purchased by the market agency on the Fort Worth Stockyards.

Brand inspection (cattle) 5¢ per head.

The corresponding rates and charges now set forth in respondents' tariff on file with the Secretary are as follows:

ARTICLE II

	Per head
Calves:	
Consignments of one head and one head only.....	\$0.50
Consignments of more than one head:	
First 20 head in each consignment.....	.35
Each head over 20 in each consignment.....	.25
Cattle:	
Consignments of one head and one head only.....	.95
Consignments of more than one head:	
First 20 head in each consignment.....	.80
Each head over 20 in each consignment.....	.65
Hogs:	
Consignments of one head and one head only.....	45
Consignments of more than one head:	
First 40 head in each consignment.....	.27
Each head over 40 in each consignment.....	.20
Sheep:	
Consignments of one head and one head only.....	40
Consignments of more than one head:	
First 10 head in each 300.....	.30
Next 50 head in each 300.....	.15
Next 60 head in each 300.....	.08
Next 130 head in each 300.....	.04
Next 50 head in each 300.....	.04

ARTICLE III

EXTRA SERVICE CHARGES

The following extra service charges are applicable to all species:

For each additional weight draft over 3 in a consignment on account of sales classification: \$0.15.

For each additional check, each additional account of sales, each proceeds deposit or bank credit, over 1 per owner: \$0.05.

ARTICLE IV

(a) Breeding animals, other than those commonly known as stockers: 5% of each gross sale price, not to exceed \$5.00 per head.

(b) At exhibitions: Food animals, stocker, feeders, other than sorts sold on open markets, per head:

Cattle and/or calves.....	\$1.00
Swine: Hogs-pigs.....	.60
Sheep and/or goats.....	.40

(c) *Provided*, That charges for selling stocker-feeder cattle through auctions at Stocker-Feeder Sales will be assessed in accordance with article II of Tariff.

The respondents request no modification of their other rates and charges, the reasonableness of which is subject to determination by the Secretary of Agriculture under the Packers and Stockyards Act, 1921, as amended.

The modifications requested by the respondents, if granted, would result in additional revenue to the respondents and, accordingly, it appears that public notice should be given to all interested persons of the filing of the petition.

All interested persons who desire to be heard upon the modifications requested in said petition shall notify the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., within 15 days from the date of the publication of this notice.

Copies hereof shall be served upon the respondents by registered mail or in person.

Done at Washington, D. C., this 31st day of October 1947.

[SEAL]

H. E. REED,
Director, Livestock Branch, Production and Marketing Administration.

[F. R. Doc. 47-9907; Filed, Nov. 6, 1947; 8:49 a. m.]

17 CFR, Part 561

DRESSED POULTRY AND DRESSED DOMESTIC RABBITS AND EDIBLE PRODUCTS THEREOF (INSPECTION AND CERTIFICATION FOR CONDITION AND WHOLESOMENESS)

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the United States Department of Agriculture is considering the amendment, as hereinafter proposed, of the revised rules and regulations governing the inspection and certification of dressed poultry and dressed domestic rabbits and edible products thereof for condition and wholesomeness (7 CFR and Supps. 56.1 et seq.) Such rules and regulations are currently effective under the Department of Agriculture Appropriation Act, 1948 (Pub. Law 266, 80th Cong., 1st Sess., approved July 30, 1947)

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposed amendment shall file the same in quadruplicate with the Hearing Clerk, Room 1844, South Building, United States Department of Agriculture, Washington 25, D. C., not later than the close of business on the 15th day after the publication of this notice in the Federal Register.

The proposals are as follows:

1. Delete the first sentence of § 56.18 *Evisceration* (7 CFR and Supps. 56.18) and substitute therefor the following: "No viscera or any part thereof shall be removed from any dressed poultry or dressed domestic rabbits in any official plant, except at the time of evisceration and inspection. Each carcass to be eviscerated shall be opened so as to expose the organs and the body cavities for proper examination by the inspector and shall be prepared immediately after inspection as eviscerated poultry of eviscerated domestic rabbits."

2. Delete the second sentence of § 56.23 (a) *Uninspected product may not be handled in any official plant; reinspection of products* (7 CFR and Supps. 56.23) and substitute therefor the following: "No edible product other than an inspected and certified edible product shall be brought into an official plant unless authorized by the Assistant Administrator and upon such terms and conditions as he may prescribe. Any inspected and certified edible product may be brought into an official plant only if the container of such product is marked for identification in the manner prescribed in § 56.51 and the product is reinspected by an inspector at the time it is brought into such plant."

3. Delete the provisions of § 56.51 *Marking of containers for shipment from one official plant to another official plant* (7 CFR and Supps. 56.51) and substitute therefor the following: "Each container of any inspected and certified edible product to be shipped from one official plant to another official plant for the further processing of such edible product shall be marked for identification as prescribed or approved by the Assistant Administrator."

Issued at Washington, D. C., this 3d day of November 1947.

[SEAL] CLINTON P. ANDERSON,
Secretary of Agriculture.

[F. R. Doc. 47-9934; Filed, Nov. 6, 1947;
8:49 a. m.]

[7 CFR, Part 927]

(Docket No. AO 71-A-13)

REGULATING THE HANDLING OF MILK IN NEW YORK METROPOLITAN MILK MAR- KETING AREA

NOTICE OF HEARING ON PROPOSED AMEND- MENTS TO TENTATIVE MARKETING AGREE- MENT AND ORDER

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and in accordance with the applicable rules of practice and procedure, as amended (7 CFR, Cum. Supp., 900.1 et seq., 11 F. R. 7737; 12 F. R. 1159, 4904) notice is hereby given of a hearing to be held at the Commodore Hotel, New York, New York, beginning at 10:00 a. m., e. s. t., November 19, 1947, for the purpose of receiving evidence with respect to the proposed amendments hereinafter set forth, or appropriate modifications thereof, to the tentative marketing agreement hereto-

fore approved (12 F. R. 4413) by the Secretary of Agriculture and to the order, as amended, regulating the handling of milk in the New York metropolitan milk marketing area (7 CFR Supps. 927.0 et seq., 12 F. R. 5249). These proposed amendments have not received the approval of the Secretary of Agriculture.

Evidence will be received on the following proposed amendments:

1. Proposed by Eastern Milk Producers Cooperative Association, Inc..

Delete subdivisions (ii) and (iii) of § 927.5 (a) (1) and substitute therefor the following:

(ii) The Class I-A price shall not be less than \$5.68 per hundredweight for each of the months of January, February, and March 1948.

2. Proposed by Metropolitan Cooperative Milk Producers Bargaining Agency, Inc..

Delete subdivisions (ii) and (iii) of § 927.5 (a) (1) and substitute therefor the following:

(ii) The Class I-A price for each of the months of January through June 1948 shall not be less than the higher of the following:

(a) \$5.46 per hundredweight for each of the months of January, February, and March, and \$5.02 per hundredweight for each of the months of April, May and June; or

(b) The Class I price under Order No. 4, as amended, regulating the handling of milk in the Greater Boston, Massachusetts, marketing area, minus 12 cents.

Copies of this notice of hearing and of the said tentative marketing agreement and of the order, as amended, now in effect, may be procured from the Market Administrator, 205 East Forty-Second Street, New York, New York, or from the Hearing Clerk, U. S. Department of Agriculture, Room 1844, South Building, Washington 25, D. C., or may be there inspected.

Dated: November 3, 1947.

[SEAL] F. R. BURKE,
Acting Assistant Administrator.

[F. R. Doc. 47-9937; Filed, Nov. 6, 1947;
8:49 a. m.]

[7 CFR, Part 932]

(Docket No. AO-33-A12)

REGULATING THE HANDLING OF MILK IN FORT WAYNE, INDIANA, MILK MAR- KETING AREA

PROPOSED MARKETING AGREEMENT AND PROPOSED AMENDMENTS TO MARKETING ORDER

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and in accordance with the applicable rules of practice and procedure, as amended (7 CFR, Supps. 900.1 et seq., 11 F. R. 7737, 12 F. R. 1159, 4904), notice is hereby given of a public hearing to be held at the Anthony Hotel, Fort Wayne, Indiana, beginning at 10:00 a. m., e. s. t., November 13, 1947, for the purpose of receiving evidence with respect to a proposed marketing agreement

and to proposed amendments to the order, as amended, regulating the handling of milk in the Fort Wayne, Indiana, milk marketing area (12 F. R. 1538). These proposed amendments have not received the approval of the Secretary of Agriculture.

This public hearing is for the purpose of receiving evidence with respect to economic or marketing conditions which relate to the proposed amendments hereinafter set forth.

The following amendments have been proposed by the Wayne Cooperative Milk Producers, Inc., Fort Wayne, Indiana:

1. Add to § 932.1 the following definition:

"A fluid milk plant" means any milk processing or distributing plant from which a route, or routes, is operated wholly or partially within the marketing area.

2. Delete § 932.1 (j) (1) (2) (3) (i) and (3) (ii) and substitute therefor the following:

(j) "Handler" means:

(1) Any person, including any cooperative association, who operates a fluid milk plant; and

(2) Any cooperative association with respect to:

(i) Milk caused by it to be delivered from producers' farms to a fluid milk plant for which milk such association is authorized to receive payment; or

(ii) Milk of producers caused to be transferred or diverted on its account from a fluid milk plant to a non-fluid milk plant only with respect to the producer milk so transferred or diverted.

3. Delete § 932.1 (1) and substitute therefor the following:

(1) "Non-fluid milk plant" means any milk plant not a fluid milk plant.

4. In § 932.3 insert following the words "all receipts" in paragraph (a) (1) the phrase: "at a fluid milk plant"

5. Add to § 932.3 (a) (1) the proviso: "Provided, That a cooperative association, which operates a non-fluid milk plant to which producer milk is caused to be diverted or transferred, shall report the quantities of butterfat and quantities of skim milk contained in all receipts of producer milk within such delivery period."

6. In § 932.4 insert following the words "received within the delivery period by a handler" in paragraph (a) the phrase: "at his fluid milk plant"

7. Add to § 932.4 (a) the proviso: "And, provided, That producer milk caused to be diverted or transferred by a cooperative association to its non-fluid milk plant shall be classified according to the provisions of § 932.4 (e)"

8. Expand the designation of § 932.4 (e) from "Transfers" to "Transfers and receipts at non-fluid milk plants."

9. Delete § 932.4 (g) (1) (ii) and (g) (1) (v) in their entirety.

10. In § 932.6 change the reference to § 932.1 (j) (3) (i) in § 932.6 (c) to read as follows: "§ 932.1 (j) (2) (i)"

11. Insert following the words "from producers' farms to a" in § 932.6 (c) the words: "fluid milk."

12. Change and modify all other provisions of the order so as to coincide with the above proposals.

Copies of this notice of hearing and of the tentatively approved marketing agreement and order, now in effect, may be procured from the market administrator, 701-2 Gettle Building, Fort Wayne, Indiana, or from the Hearing Clerk, Office of the Solicitor, United States Department of Agriculture, in Room 1844, South Building, Washington 25, D. C., or may be there inspected.

Dated: November 4, 1947.

[SEAL] S. R. NEWELL,
Acting Assistant Administrator.

[F. R. Doc. 47-9931; Filed, Nov. 6, 1947;
8:48 a. m.]

[17 CFR, Part 979]

[Docket No. AO-185]

HANDLING OF IRISH POTATOES IN EASTERN SOUTH DAKOTA PRODUCTION AREA

DECISION WITH RESPECT TO PROPOSED MAR- KETTING AGREEMENT AND ORDER

Pursuant to Public Act No. 10, 73d Congress (May 12, 1933) as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), (hereinafter referred to as the "act"), and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders, as amended (7 CFR and Supps., 900.1 et seq., 11 F. R. 7737, 12 F. R. 1159, 4904) a public hearing was held at Watertown, South Dakota, on June 19-20, 1947, pursuant to notice thereof which was published in the FEDERAL REGISTER on June 4, 1947 (12 F. R. 3632) upon a proposed marketing agreement and proposed order regulating the handling of Irish potatoes grown in the Eastern South Dakota Production Area.

Upon the basis of the evidence introduced at the aforesaid hearing and the record thereof, the Assistant Administrator, Production and Marketing Administration, on August 19, 1947, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding. The notice of the filing of such recommended decision, affording opportunity to file written exceptions thereto, was published in the FEDERAL REGISTER on August 23, 1947 (12 F. R. 5704).

The material issues presented on the record of the hearing were:

(1) The desirability of and economic justification for entering into an agreement and the issuing of an order for the handling of Irish potatoes grown in the Eastern South Dakota production area.

(2) The necessity to define and the equitable scope of definitions for "Secretary," "act," "persons," "production area," "potatoes," "handler," "ship," "producer," "fiscal year," "committee," "varieties," "seed potatoes" and "table stock potatoes."

(3) The necessity for administering the marketing agreement and order through an administrative committee

and the equitable nature of provisions pertaining to its (a) establishment and membership, (b) initial committee, (c) term of office, (d) nominations, (e) voting, (f) districts, (g) selection and qualification of members, (h) vacancies, (i) obligations, (j) alternate members, (k) procedure, (l) members' expenses and compensation, (m) powers, and (n) duties.

(4) Necessity for the authorization of the committee to incur expenses necessary for its operation and the necessity for provision to raise funds to defray such expenses through levying of assessments, by equitable distribution of such levies on handlers.

(5) Necessity to account for funds received from assessments, with distribution of excess receipts among handlers on the basis of their equitable interest therein, and necessity for provisions permitting the committee to maintain suits for collection of assessments.

(6) The necessity for the regulation of Irish potato shipments and the necessity of and equitable nature of provisions providing that (a) the committee shall prepare and submit to the Secretary a report outlining its proposed marketing policy at the beginning of each fiscal year; (b) the committee shall have the duty to investigate supply and demand conditions for grade, size, and quality of Irish potatoes of all varieties and whenever it finds that such conditions make it advisable to regulate the shipments of particular grade, size, and quality of potatoes of any or all varieties during any period, it shall recommend to the Secretary the particular grade, size, and quality of any or all varieties of potatoes deemed advisable to be shipped during such period; (c) the committee shall consider certain relevant factors, including potato prices by grade, size, and quality, supplies from the producing area, competing supplies, demand for potatoes, and other relevant factors; (d) the Secretary shall limit the shipment of potatoes from the production area whenever he finds, from the recommendations and data submitted by the committee or from other information, that to do so would tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended; (e) whenever shipments are regulated under the agreement or order each handler shall cause such shipment or shipments to be inspected by an authorized representative of the Federal-State Inspection Service and, further, shall cause a copy of the inspection certificate to be submitted to the committee; (f) exemption of shipments shall be provided, through appropriate procedural rules, whereby any producer who is unable to ship as large a proportion of his potatoes, by reason of a regulation, as the average of all producers in the production area, so that such producer will be permitted to ship as large a proportion of his potatoes as the average of all producers; appeals from the action of the committee in handling applications by producers for exemption are allowed, subject to the right of the Secretary to modify, change, alter, or rescind any procedural rules or any

exemptions granted pursuant thereto; records shall be maintained by the committee and a weekly report furnished to the Secretary showing the applications for exemptions received, exemptions granted, exemptions denied, and shipments made under exemption.

(7) The necessity for the regulation of surplus Irish potatoes and the necessity for the equitable nature of provisions providing that (a) the committee, whenever it finds that a surplus of Irish potatoes exists, shall determine the extent of such surplus and recommend to the Secretary the control and disposition of such surplus and, (b) whenever the Secretary finds from recommendations and information supplied by the committee or from other information that the control and disposition of surplus will tend to effectuate the declared policy of the act, he shall control and dispose of such surplus potatoes and shall further provide for equalizing the burden of such surplus elimination and control among producers and handlers and, (c) the committee is authorized to enter into contracts or agreements with any person, agency, or organization, for the purpose of facilitating the disposition of surplus potatoes and, (d) the Secretary may designate the committee to assist in carrying out any program of surplus regulation.

(8) The necessity for and equitable nature of provisions providing for exemption from regulation of: (a) Potatoes shipped for consumption by charitable institutions or for distribution by relief agencies, (b) potatoes shipped for manufacturing or conversion into by-products, and, (c) upon the recommendation of the committee, potatoes shipped for livestock feed or for other specified purposes.

(9) The necessity for and equitable nature of the provisions of sections 7 through 19, inclusive, as published in the FEDERAL REGISTER on June 4, 1947 (12 F. R. 3632), which are common to marketing agreements and orders, and which sections provide for: 7. Reports; 8. Compliance; 9. Right of the Secretary; 10. Effective time and termination; 11. Effect of termination or amendment; 12. Duration of immunities; 13. Agents; 14. Derogation; 15. Personal liability; 16. Separability; 17. Amendment; 18. Counterparts; 19. Order with marketing agreement.

No exceptions to the recommended decision of the Assistant Administrator, Production and Marketing Administration, were filed.

Findings and conclusions. The findings and conclusions on the aforementioned material issues, all of which are based on the evidence introduced at the hearing and the record thereof, and which are the same as the findings and conclusions which were set forth in connection with the respective issues in the aforementioned recommended decision, are as follows:

(a) Certain terms, applying to specific individuals, agencies, legislation, concepts, or things, are used throughout the proposed marketing agreement and order. These terms should be defined for the purpose of specifically designating their

applicability and establishing appropriate limitations to their meaning wherever they are used in the proposal and to preclude the burdensome necessity of redefining them when they are later used in the proposed marketing agreement and order. These definitions are necessary and incidental to the operation of the marketing agreement (hereinafter called the agreement) and order and for the effectuation of the declared purposes of the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter called "act"). The definitions, "Secretary" "act" "persons" "potatoes" "producer" "fiscal year" and "varieties" as contained in the Growers' proposal set forth in the notice of hearing, were not in controversy at the hearing and are similar to or identical with definitions used in other similar marketing agreements and orders. Evidence at the hearing shows that these definitions are self-evident, due to their source, or they are commonly accepted by growers, shippers, and other interested parties in the potato industry of Eastern South Dakota. They should be defined as they are shown in the notice of hearing.

(b) The "production area" should be defined to include the counties of Codington, Clark, Hamlin, Deuel, Brown, Day, and Kingsbury in the State of South Dakota, as proposed by the South Dakota Potato Growers' Association. These counties include the bulk of commercial Irish potato production in Eastern South Dakota, and production conditions therein are relatively homogeneous. Commercial production in other counties in South Dakota east of the Missouri River, is relatively small or non-existent, as compared with production in these seven counties. It would be impractical to attempt regulation of shipments of Irish potatoes grown in such other counties due to the excessive cost of adequate inspection and other administrative expenses. The seven counties named comprise the smallest practical production area in Eastern South Dakota, and the "production area" should, therefore, be defined to include only such counties. The definition is necessary to and must be incorporated in the marketing agreement and order for the general reasons set forth under (a) above, and because it is necessary to delineate the area from which the handling of Irish potatoes is to be regulated.

(c) A definition of "handler" should be incorporated in the marketing agreement and order because the burden of regulation falls on handlers. Such definition is necessary for the general reasons set forth in (a) above, and it should include terminology bringing all persons, otherwise defined in the marketing agreement and order, shipping Irish potatoes in the form in which they are extracted from the soil, except persons acting as mere transporting agents of handlers, within the ambit of the definition. Such exception in the production area should be limited to contract and common carriers because they perform such transportation function at either a "flat job rate" or on the basis of a "rate per ton-mile" and neither of such carriers have a proprietary inter-

est in the commodity moved. The definition should be linked with shipment of Irish potatoes because the program is predicated on the regulation of shipments in interstate commerce or shipments directly burdening, obstructing, or affecting such commerce. Producers who ship potatoes of their own production should be handlers under the definition because they have a proprietary interest in the commodity moved and because they are performing a marketing function in effecting such shipments. Handler should, therefore, be defined as set forth in the notice of hearing with an additional exception to cover contract carriers.

(d) A definition of "ship" and "handle" is incorporated in the marketing agreement and order for the general reasons set forth in (a) above, and to indicate the activity of handlers which will be regulated. Evidence introduced at the hearing indicated that all shipment or handling of Irish potatoes grown in the production area either entered the current of interstate or foreign commerce or that such shipment or handling directly burdened, obstructed or affected such commerce, and that regulation of all shipment or handling, which terms are synonymous for the purposes of the definition, of such potatoes will simplify enforcement problems under the marketing agreement and order. The incorporation of this definition in the marketing agreement and order is necessary and incidental to accomplish the declared purposes of the act. The definition set forth in the notice of hearing should, therefore, be amended as herein indicated and as hereinafter set forth.

(e) The South Dakota Potato Committee means the administrative body which acts as the agent of the Secretary and represents producers in the operation of the marketing agreement and order. Such committees are authorized by the act and they are necessary and incidental to operation of the marketing agreement and order and to effectuate the declared purposes of such act. The designation "South Dakota Potato Committee" is sufficiently distinctive to prevent confusion with other existing or possible administrative bodies. This definition is incorporated in the marketing agreement and order for the general reasons enumerated in (a) above, as well as for the reasons herein set forth. The definition should, therefore, be as set forth in the notice of hearing after deletion of the superfluous words "North Eastern"

(f) "Seed potatoes" and "table stock potatoes" should be defined in the marketing agreement and order because the marketing agreement and order proposes to regulate, under certain circumstances, differently for each type. Seed potatoes achieve their identity in South Dakota, upon being certified, tagged, marked or otherwise appropriately identified by the State Seed Certification Board of South Dakota, or its legal successors. Special regulation of seed potatoes is justified because of extra production cost attaching thereto, because of general superiority of product, because of limited production, and because they may be and

frequently are consumed as table stock potatoes. Table stock potatoes involve the antithesis of the factors justifying different regulation for seed potatoes, and the definition of table stock potatoes should include all Irish potatoes not certified as seed potatoes. The definition of seed potatoes in the marketing agreement and order should be as set forth in the notice of hearing, as modified to correctly identify the State seed certifying agency. The definition of table stock potatoes should be incorporated in the marketing agreement and order to include all potatoes not covered by the definition of seed potatoes.

(g) The "South Dakota Potato Committee" (hereinafter called "committee") consisting of seven producer members, should be established to act as the agent of the Secretary and as an agency representing producers in the operation of the marketing agreement and order to effectuate the declared purposes of the act. There should be an alternate member for each member of the committee in order to provide continuity of operation in case of vacancies. Seven members will provide adequate and fair representation on both a geographic and a production basis.

Initial members of the committee should be selected by the Secretary for a term of office ending June 30, 1948, and until their successors are selected and qualified. Selections of initial members of the committee may be made from lists of nominees supplied by producer groups or associations operating in and representative of producers in the producing area. If successors have not been selected, or if selectees have not qualified by the end of the current fiscal period, the initial members should continue to function until their successors have been selected and have qualified in order to provide continuity of operations.

The term of office of members and alternates of the committee, except for the initial members, should be on the basis of fiscal periods, i. e., beginning on the first day of July and continuing until the following June 30.

Nominations for committee membership, except for initial members and their alternates, should be determined by producers' elections at assembled meetings in each district or by producers voting by mail in each district. The committee should determine the most desirable and convenient method, aforesaid, of electing nominees for each district. The committee should appoint appropriate officials to conduct such elections. The committee should provide ample notice of their determinations as to manner of voting in each district by using newspapers, mail, and other means of communication. The committee should provide forms by June 10 of each year on which producers may list their choices. Lists of nominees, certified by appropriate election officials, should be forwarded via the committee to the Secretary by June 15 of each year. Election by assembled meeting of producers is considered the preferable form for naming nominees but mail voting for nominees is also necessary and incidental to proper operation of the mar-

keting agreement or order under circumstances which preclude the possibility of producers conveniently attending assembled meetings. Producers' assembled meetings in each district should be conducted under the supervision of a chairman and a secretary designated by the committee and in accordance with Roberts' Rules of Order. When mail voting is used, the committee should check voters, identified by name and address on envelopes containing ballots against a producers eligibility registry.

Each producer should be eligible to cast one vote for each of the designated number of nominees in the district in which he qualifies as a producer. Votes should not be cumulated for any one nominee. A person qualifying as a producer in more than one district should elect the district in which he chooses to exercise his voting rights.

The production area, as proposed by the South Dakota Potato Growers' Association, is divided into four geographic districts for election and administrative purposes. Respective districts are comprised of the following counties: District No. 1—Codington and Deuel Counties; District No. 2—Clark County; District No. 3—Hamlin and Kingsbury Counties; and District No. 4—Brown and Day Counties. A fifth district, as proposed by the Fruit and Vegetable Branch, Production and Marketing Administration, and comprising an additional 37 counties or the remainder of the State of South Dakota east of the Missouri River, is not considered a desirable and practical addition to the growers' proposal. As such 37 counties are not included in the production area for the reasons set forth in (b) above, there is no necessity for establishment of such fifth district.

Representation on the committee is apportioned according to districts. Two members shall be from District No. 1, three members from District No. 2, and one member each from Districts 3 and 4. This committee representation, with respective alternates, will provide adequate and equitable representation on a geographic and production basis. Seven committee members, with representation from each district and with procedural rules requiring that four members must be present to constitute a quorum and that four members must concur in their voting to validate any committee action, provides a committee of sufficient size to give adequate representation to producers, to maintain a committee of practical workable size, and to provide assurance that committee actions reflect the will of at least a majority of the producers' representatives. Two nominees should be presented by producers for each position as committee member and for each position as alternate member, in order for the Secretary to have a choice in exercising his selection of representatives. If nominations for committee members and alternates are not supplied to the Secretary by June 15 of each year, the Secretary should be allowed to select members without regard to nominations and such selections should be on the basis of the aforesaid representation from each district. Any person who is selected by the Secretary

as a member or as an alternate member of the committee should qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

Authority to fill any vacancy in the committee membership, or among alternates, should be retained by the Secretary in order to maintain continuity of operation which are necessary and incidental to the administration of the marketing agreement and order and for the effectuation of the declared purposes of the act.

Any person, who is either a member or alternate committee member, who vacates his membership or alternate membership for any reason, should account for all receipts and disbursements which have come into his possession as such member or alternate and such vacating member or alternate should deliver all property including funds, books, records, etc., to his successor or to a trustee designated by the Secretary. Such vacating member should execute an assignment and other instruments as may be necessary or appropriate to vest in such successor or trustee full title to all of the property, funds, and claims vested in such vacating member.

An alternate member should be authorized to act in the place and stead of the member for whom he is alternate during such member's temporary absence. Continuity of operation of the marketing agreement and order on a representative basis is better assured by such authorization. Similarly, an alternate should be authorized to act in a member's absence when such absence is due to death, removal, resignation, or disqualification of the member. Such authorization should provide that the alternate can act in place and stead of the member for whom he was alternate until a successor for the member has been selected and has qualified.

It is necessary and incidental to the operation of the marketing agreement and order and the effectuation of the purposes of the act that the committee should be authorized to provide for meetings by telephone, telegraph, or other means of communication. Any vote by members at such disassembled meetings should be promptly confirmed in writing. In any assembled meeting all votes should be cast in person.

The necessary expenses of committee members should be provided when they are acting on committee business. A per diem compensation of not to exceed \$5.00 for each day spent in attendance at committee meetings should be allowed.

The powers of the committee, as authorized by the act, namely, to administer the marketing agreement and order, to make necessary rules and regulations to effectuate the terms and provisions of the marketing agreement and order, to receive, investigate, and report to the Secretary complaints of violations of the provisions of the marketing agreement or order, and to recommend amendments, should be granted to the South Dakota Potato Committee.

Duties, as outlined in the notice of hearing, should be given to the committee. These duties, namely: (1) To act

as intermediary between the Secretary and any producer or handler; (2) to keep minutes, books, and records reflecting all acts and transactions of the committee, which shall be subject to examination at any time by the Secretary; (3) to investigate the growing, shipping, and marketing conditions for potatoes and to assemble data thereon; (4) to furnish the Secretary such available information as he may request; (5) to select a chairman and such other officers as may be necessary, and to adopt such rules and regulations for conduct of its business as it may deem advisable; (6) to submit a budget of its expenses, with report thereon, at the beginning of each fiscal year; (7) to have the committee's books audited at least each year and to furnish a copy of such audit to the Secretary; (8) to appoint such employees, agents, and representatives as it may deem necessary, and to determine the salary and define the duties of each such person, and (9) to confer with other marketing agreement and order committees in other states and areas, are necessary and incidental to the operation of the committee under the marketing agreement and order and for the effectuation of the declared purposes of the act.

All of the findings hereinbefore set forth under (g) are predicated on evidence introduced at the hearing on proposals contained in the notice of hearing and proposed by the Fruit and Vegetable Branch, Production and Marketing Administration, and the South Dakota Potato Growers' Association. No evidence was introduced in favor of a portion of the administrative body proposal of the association and witnesses testified that the substitute proposals of the Fruit and Vegetable Branch were more complete and adequate to attain the desired objectives, than the portion of the association's administrative body proposal on which no evidence was presented at the hearing. Marketing agreement and order provisions hereinafter set forth will provide for expeditious establishment of, orderly and continuous operation of, and equitable representation of producers on the administrative body which will be the agency through which the Secretary will perform his administrative duties under the act in connection with such marketing agreement and order, all of which objectives are contemplated by the aforesaid evidence and the act. Handler representation on the administrative body is accomplished, despite the absence of reference thereto or specific provision therefor, through the fact that all handlers in the production area are also producers. Marketing agreement and order provisions to establish and provide for the continuous operation of an administrative body in an orderly, efficient and equitable manner should be as hereinafter set forth.

(h) The operation of the committee and of the marketing agreement and order necessitates funds for payment of necessary administrative expenses. It is necessary and appropriate that such expenses should be incurred under direction of the committee and that assessments should be levied against the movement of Irish potatoes to market in order to meet

such expenses. Assessments should be levied against the first handler of potatoes. Assessments should be based on each handler's pro rata share of the expenses incurred by the committee. Pro rata shares should be determined by the proportion of the total crop which each handler ships. In making such pro rata shares of expenses effective on handlers, the budget of expense and revenue should recommend a rate of assessment against shipments which the Secretary can consider and, if he approves, fix as the rate per given unit of shipment which handlers must pay. The Secretary should be authorized to increase the rate of assessments which handlers should pay for a season if it is found during the course of a given season that the then current rate of assessments is insufficient to cover expenses. Handlers should be authorized to make advance payments to the committee if they wish to accommodate the committee in such manner.

If revenues collected through assessments are in excess of expenses at the end of any fiscal year, such proportionate excess shall be credited to individual handlers in accordance with the payments they have made on assessments. If any handler who has a proportionate refund due him so demands, such refund should be effected.

The committee should be authorized to maintain, with the approval of the Secretary, suits in its own name, or in the name of its members, against any handler for collection of such handler's pro rata share of the committee's expense.

Assessment provisions of the marketing agreement and order should be as hereinafter set forth to conform with the evidence introduced at the hearing, to provide necessary funds to defray the costs of administering the marketing agreement and order, to equitably distribute operating costs of the program against all handlers regulated, and to prevent any possible abuse of assessment prerogatives.

(i) Regulation of shipments of Irish potatoes grown in the production area should provide a method to limit such shipments by grade, size and quality of any or all varieties of both table stock and seed potatoes during any marketing season for South Dakota Irish potatoes when the prices to farmers therefor give such potatoes a purchasing power with respect to articles that farmers buy equal to or less than the purchasing power of such potatoes during the base period provided by the act. Evidence introduced at the hearing delineated marketing agreement and order provisions, to provide a method of accomplishing such regulation under the aforesaid circumstances, which provisions should be as hereinafter set forth.

Irish seed potato regulation should be and is authorized on a different basis under particular circumstances than table stock Irish potato regulation because the former can be and is frequently substituted for the latter by the consumer and because of different factors entering into the production and marketing of the former. Such different regulation should be and is predicated on an annual

marketing policy or an amended marketing policy adopted by the committee, published and thereafter submitted to the Secretary. The method provided for the institution of such different regulations requires the committee to submit specific recommendations and information to the Secretary to justify the proposed action, and specific regulations will thereafter be issued by the Secretary on the basis of the recommendations and information submitted or on the basis of other information available to the Secretary, providing that such regulations will tend to effectuate the declared policy of the act.

The committee, in arriving at a basis for its recommendations to the Secretary with respect to regulations, should give consideration to various relevant marketing and production factors, such as market prices of Irish potatoes, including prices by grade, size, and quality of any and all varieties recommended for regulation; Irish potato supplies on hand in markets, supplies en route to markets, and supplies on track in markets; available supply, quality, and condition of Irish potatoes in the production area; supplies of Irish potatoes from competing areas and regions; the trend and level of consumer income, and other relevant factors.

Authority should be and is established in the marketing agreement and order, hereinafter set forth, for applying any specific regulation to any variety or varieties of potatoes, and for applying different regulations for different varieties during any period, and for applying different regulations during any period to table stock, on the one hand, and to seed potatoes, on the other hand, and for applying regulations to any variety or varieties of table stock or seed potatoes without applying it to any other specific variety or varieties of seed potatoes or of table stock potatoes as facts warrant. The Secretary should notify the committee of any regulations issued under this general provision and the committee should give adequate notice thereof to producers and handlers.

It is necessary for the operation of regulations under the marketing agreement and order for the committee and for the Secretary to have evidence which will show either compliance or non-compliance by handlers with the terms of the regulations. Evidence may be readily supplied by means of Federal-State Inspection Certificates. Inspections which representatives of the Federal-State Inspection Service offer and the certificates of inspection which they issue are commonly recognized throughout the production area, and in all domestic markets, as authoritative evidence of the subject product's definitive characteristics. Handlers should be required to have their shipments of Irish potatoes inspected before they are shipped so that authoritative evidence relating to characteristics of potatoes in such shipment will be available to the committee and to the Secretary. Each handler should be required to submit to the committee a copy of the inspection certificate issued upon such handlers' Irish potato shipments grown in the produc-

tion area during any period of regulation. Reasonably prompt Federal-State Inspection can be accomplished at all points in the production area for reasonable fees.

The committee should provide rules and regulations for the issuance of exemption certificates to producers. In order to provide equity among growers in so far as the effects of any given regulation or set of regulations are concerned, it may be necessary to allow some producer or producers to ship some Irish potatoes which are otherwise prohibited by the regulations. The committee should be empowered to issue, with the approval of the Secretary, rules and regulations pursuant to which exemption certificates shall be issued. The committee should issue certificates of exemption whenever a producer, because of regulation, is unable to ship as large a portion of his crop as the average of all producers. If any producer is dissatisfied with the action of the committee in handling his application for exemption, he should have the right of appeal to the committee for a re-examination of his application. The committee should be empowered to ask the producer for additional information upon which he based his appeal. The committee should be required to re-examine the application for an exemption certificate and to make a final determination with respect thereto. The committee should be required to promptly notify the appellant and should be required also to promptly furnish a copy of the appeal, with a copy of the final determination, to the Secretary. As an equitable matter, the Secretary should have the right to modify, change, alter, or rescind any procedural rules and regulations relating to exemptions and any exemption certificates granted or denied. The committee should be required to maintain current records with respect to applications for exemptions from the regulations and it should be required to furnish the Secretary with a weekly report showing the number of applications received, the disposition of such applications, and the shipments made under exemption certificates.

(j) One of the duties which should be and is required of the committee under the marketing agreement and order is to investigate supply of and demand for Irish potatoes in the production area and in the area in which Irish potatoes from the production area are marketed. Whenever the committee finds that the relationship of the supply of Irish potatoes to the demand for such potatoes, as reflected by producers' prices, is such that some of the supply may be considered surplus, then the committee should determine the extent of such surplus or the composition of such surplus by grade, size, and quality. If the committee deems advisable under such circumstances, it should recommend to the Secretary the control and disposition of surplus Irish potatoes and plans for equalizing the burden of surplus elimination and control among producers and handlers.

The Secretary, if he finds from recommendations of the committee, or from other information available to him, that the control and disposition of surplus

Irish potatoes will tend to effectuate the declared policy of the act, should control and dispose of such surplus Irish potatoes and should provide for equalizing the burden of control and disposition among producers and handlers thereof.

The committee should be authorized, whenever the Secretary provides for control and disposition of surplus Irish potatoes, to enter into contracts or agreements with any person, agency, or organization, for the purpose of facilitating the disposal of such surplus. It is necessary and incidental to efficient local administration of any surplus control or disposal program that the local committee should be empowered to assist in such program. It is also necessary and appropriate that the Secretary should be authorized to designate the committee as an agency to assist in the operation of any governmental program for the elimination or control of surplus.

The method for controlling and disposing of surplus Irish potatoes, hereinafter set forth, is in accord with the testimony introduced at the hearing and should, therefore, be established as hereinafter set forth.

(k) The shipment of Irish potatoes for consumption by charitable institutions or for distribution by relief agencies does not appreciably effect the market price for table stock or seed potatoes. Shipments which are made for these specific purposes might not otherwise take place because of the inability of the consuming agencies to buy in normal markets, hence it is desirable that such outlets should be provided with Irish potatoes that are fit for consumption but which might otherwise not be consumed unless they are not subjected to regulations under the marketing agreement and order. Shipment of Irish potatoes for consumption by charitable institutions or for distribution by relief agencies should not be subject to regulation under the marketing agreement and order. Also, Irish potatoes shipped for manufacture or for conversion into by-products, except for shipments for manufacturing into specified products the shipment of which is recommended for regulation by the committee, and approved by the Secretary, should not be subject to regulation. Evidence shows that shipments of Irish potatoes for manufacturing into products which shipments might be specified for regulation by the committee, with the approval of the Secretary, are potato chips and possibly starch, both of which are used for human consumption in virtually the original form of the raw material. If shipments for manufacturing into other products should be regulated in the consensus of the committee, it may so recommend. It is also desirable and necessary that shipments for conversion into by-product, which can use off-grade or undesirable sizes as well as the preferred types, should not be subject to regulation. Shipments of Irish potatoes for manufacturing or conversion, as hereinbefore indicated, should not be subject to regulation because they do not affect orderly marketing in that the use of the poorest grade of Irish potatoes would otherwise go to waste.

Irish potatoes transported from the producer's farm to the customary grading, storage, or loading station should not be subject to regulation. Any and all of these actions are commonly construed as occurring prior to the act of shipping. Such is the intent of the present proponents of the marketing agreement and order.

The committee should be authorized to recommend that Irish potatoes shipped for livestock feed, or for other specified purposes, should not be subject to regulation for reasons comparable to those set forth above for manufacturing and conversion. Livestock feed is an outlet which does not compete with markets for table stock or seed potatoes. Whenever conditions warrant that this market outlet should be used, there is no good reason why Irish potatoes for such purposes should be required to meet market standards imposed upon table stock or seed potatoes. Also, Irish potatoes which may be discarded for table stock or seed potatoes because of regulations may find an outlet as livestock feed, hence their exemption from regulations will tend to promote objectives sought under regulations in accordance with previous sections.

It is necessary and incidental to the operation of the marketing agreement and order and to effectuate the objectives of the act that the committee should be authorized to provide adequate safeguards to prevent Irish potatoes which are relieved of regulation from entering the current of interstate or foreign commerce to compete with Irish potatoes which have been regulated. Such safeguards, among others, should include Federal-State inspection in order that distinguishing characteristics of specific or particular shipments may be readily determined in accordance with commonly recognized authority.

Irish potatoes which are not subject to regulation under other sections, but for which producers receive some return (which is the position of the nonregulated Irish potatoes considered herein) should bear their equitable share of the expense of operating the marketing agreement and order.

In order to maintain appropriate identification for shipments which are not subject to regulation, the committee should be authorized to issue Certificates of Privilege to producers or handlers shipping such Irish potatoes. It is necessary in the interests of efficient operation of the marketing agreement and order that such identification should be maintained in this manner. In order that the Secretary may be properly advised concerning the movement of Irish potatoes from the production area, it is necessary and incidental to the operation of the marketing agreement and order that records of such shipments should be maintained and that weekly reports should be forwarded by the committee to the Secretary showing the disposition and number of shipments which were exempt from regulation. The Secretary should have the right to modify, change, alter, or rescind any safeguards prescribed or Certificates of Privilege issued by the committee.

(l) For the proper and efficient administration of the marketing agreement and order, the committee needs information on Irish potatoes with respect to supplies, movement, prices, and sundry other relevant factors which are best obtainable from handlers. The committee should be authorized to request, and every handler should be required to furnish to the committee, any information which is required for reasonable operation of the marketing agreement and order. The Secretary should retain the right to modify, change, or rescind any request by the committee for information in order to protect handlers from unreasonable requests for reports.

(m) The provisions of sections 8 through 19, as published in the Federal Register of June 4, 1947 (12 F. R. 3632), are common to marketing agreements and orders now operating. These provisions are incidental to, and not inconsistent with section 8c (5), (6), and (7) of the act, and necessary to effectuate the other provisions of the marketing agreement and order, and to effectuate the declared purposes of the act. Testimony at the hearing supports the inclusion of each of these provisions as published in the notice of hearing. These provisions, identified by section numbers and title, are as follows: Section 8. Compliance; Section 9. Right of the Secretary; Section 10. Effective time and termination; Section 11. Effect of termination or amendment; Section 12. Duration of immunities; Section 13. Agent; Section 14. Derogation; Section 15. Personal liability; Section 16. Separability; Section 17. Amendments; Section 18. Counterparts; and Section 19. Order with marketing agreement.

(n) The seasonal average farm price per bushel for Irish potatoes in South Dakota varies from year to year depending upon a variety of factors, among which the size of the South Dakota crop, the size of the crop in the surplus late states, and the current level of consumer income are important. The average farm price for Irish potatoes in South Dakota during the base period, August 1919-July 1929, is \$1.04 per bushel, although annual variations within that period range from \$0.48 to \$2.14 per bushel. Seasonal average farm prices for Irish potatoes in South Dakota during the period 1929-1946, inclusive, have ranged annually from \$0.27 to \$1.60 per bushel. The seasonal average farm price for Irish potatoes in South Dakota was below parity during ten of the eighteen seasons, 1929 to 1946, inclusive, and above parity during the other eight seasons. Preliminary reports indicate a seasonal average price per bushel received by farmers for Irish potatoes in South Dakota during the 1946 crop year of \$1.52 per bushel. Parity price for Irish potatoes in South Dakota during the 1946 crop year averages \$1.50 per bushel, although farm prices for Irish potatoes in South Dakota were below parity during the fall months.

Within each season farm prices for Irish potatoes also vary from month to month in South Dakota usually reaching a seasonal low during the months of

September through December. Last year, 1946, during this fall period, farm prices of Irish potatoes in South Dakota were 97 percent of parity. The prospect of farm prices for Irish potatoes in South Dakota being below parity is greater during this period than during any other portion of the Irish potato crop year. Sub-parity farm prices for Irish potatoes in South Dakota during the fall months of each production year are and have continued to be for a long period of time, an annual phenomenon which can reasonably be anticipated to obtain during the fall months of the 1947 production year.

Production of certified Irish seed potatoes in South Dakota increased rapidly during recent years. Concurrently heavy monthly Irish potato marketings in South Dakota have shifted to considerable extent from late fall and early winter, i. e., September through December, to the late winter and early spring, i. e., January through March, reflecting increased movement of Irish seed potatoes for late crop plantings. Farm prices for Irish potatoes in South Dakota usually are higher during the late winter and early spring period when movement of Irish seed potatoes is heavier than during the fall and early winter period when movement of Irish table stock predominates. Therefore, the need for regulation by grade, size, and quality is greater during the period of table Irish stock movement than during the period of heaviest Irish seed potato movement. In addition, the fall and early winter period is one in which South Dakota Irish potato prices usually are lowest.

The proposed marketing agreement and order and all the terms and conditions thereof will tend to effectuate the declared policy of the act with respect to Irish potatoes produced in said production area, specified in this proposed marketing agreement and order, by establishing and maintaining such orderly marketing conditions therefor as will tend to establish prices to the producers thereof at a level that will give such Irish potatoes a purchasing power, with respect to the articles that the producers thereof buy, equivalent to the purchasing power of such Irish potatoes in the base period, August 1919-July 1929, and by protecting the interest of the consumer by (1) approaching the level of prices which it is declared in the act to be the policy of Congress to establish by a gradual correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (2) by authorizing no action which has for its purpose the maintenance of prices to producers of such Irish potatoes above the level which it is declared in the act to be the policy of Congress to establish.

(c) The inspection of Irish seed potatoes to determine their grade, size, quality, and maturity, and the certification therefor with respect to such findings by a Federal-State inspector tends to establish orderly marketing conditions for Irish seed potatoes in South

Dakota. It is found that such potatoes, which are inspected and certified by recognized authority as having certain specified characteristics, normally returned a higher price to farmers than do Irish potatoes which are not so inspected and certified. Inspection and certification of Irish seed potatoes by the Federal-State Inspection Service tends to promote the public interest by providing buyers and sellers with a greater amount of specific, accurate information relating to Irish seed potatoes offered for market than such interested parties would have in the absence of inspection and certification. Inspection and certification of Irish seed potatoes in South Dakota tends to promote orderly marketing conditions in the public interest and it is necessary for the operation of grade, size, quality, and maturity regulations that Irish potatoes marketed from this production area should be inspected and certified.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Irish Potatoes Grown in Eastern South Dakota Production Area" and "Order Regulating the Handling of Irish Potatoes Grown in Eastern South Dakota Production Area" which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the aforesaid rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

It is hereby ordered, That all of this decision, except the attached agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the said agreement are identical with those contained in the attached order, which will be published with this decision.

This decision filed at Washington, D. C., this 3d day of November 1947.

[SEAL] CLINTON P. ANDERSON,
Secretary of Agriculture.

Order Regulating the Handling of Irish Potatoes Grown in Eastern South Dakota Production Area

§ 979.0 *Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73rd Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.) hereinafter referred to as the "act" and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Supps., 800.1 et seq., 11 F. R. 7737; 12 F. R. 1159, 4904), a public hearing was held at Watertown, South Dakota, on June 19-20, 1947, upon a pro-

posed marketing agreement and a proposed order regulating the handling of Irish potatoes grown in Eastern South Dakota production area. Upon the basis of evidence introduced at such hearing, and the record thereof, it is found that:

(a) The terms and provisions of this order¹ prescribe, so far as practicable, such different terms, applicable to different production areas, as are necessary in order to give due recognition to the difference in production and marketing of such Irish potatoes;

(b) This order¹ is limited in its application to the smallest regional production area that is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to any subdivision of said production area specified herein would not effectively carry out the declared policy of the act; and

(c) This order¹ and all of the terms and conditions of this order will tend to effectuate the declared policy of the act with respect to Irish potatoes produced in said production area, specified in this order, by establishing and maintaining such orderly marketing conditions therefor as will tend to establish prices to the producers thereof at a level that will give such Irish potatoes a purchasing power, with respect to the articles that the producers thereof buy, equivalent to the purchasing power of such Irish potatoes in the base period, August 1919-July 1929, and by protecting the interest of the consumer by (1) approaching the level of prices which it is declared in the act to be the policy of Congress to establish by a gradual correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumption demand in domestic and foreign markets, and (2) by authorizing no action which has for its purpose the maintenance of prices to producers of such Irish potatoes above the level which it is declared in the act to be the policy of Congress to establish.

§ 979.01 *Order relative to handling.* It is, therefore, ordered, pursuant to the findings and determinations set forth in § 979.0 and pursuant to the aforesaid act, that such handling of Irish potatoes produced in the counties of Codington, Clark, Hamlin, Deuel, Brown, Day, and Kingsbury in the State of South Dakota, as is in the current of commerce between any of said counties and any point outside the State of South Dakota, or so as directly to burden, obstruct, or affect such commerce, shall, from and after the time hereinafter specified, be in conformity to and in compliance with the terms and conditions of this order.¹

§ 979.1 *Definitions.* As used herein, the following terms have the indicated meaning:

(a) "Secretary" means the Secretary of Agriculture of the United States or any other officer or member of the United States Department of Agriculture, who is or may hereafter be authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

¹ This order shall not become effective unless and until the requirements of § 800.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(b) "Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246 (1937)) 7 U. S. C. 601 et seq. (Supp't 5, 1939) as amended.

(c) "Persons" means an individual, partnership, corporation, association, legal representative, or any organized group or business unit of individuals.

(d) "Production area" means the counties of Codington, Clark, Hamlin, Deuel, Brown, Day and Kingsbury in the State of South Dakota.

(e) "Potatoes" means all varieties of Irish potatoes grown in the production area.

(f) "Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of potatoes owned by another person) who ships potatoes in fresh form, whether of his own production or other.

(g) "Ship" or "handle" means to transport, sell, or in any other manner place potatoes in the current of interstate commerce or so as directly to burden, obstruct, or affect such commerce.

(h) "Producer" means any person engaged in the production of potatoes for market.

(i) "Fiscal year" means the period beginning on July 1 of each year and ending June 30 of the following year.

(j) "Committee" means the South Dakota Potato Committee established pursuant to section 2 hereof.

(k) "Varieties" means and includes all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

(l) "Seed potatoes" means and includes all potatoes officially certified and tagged, marked, or otherwise appropriately identified, by the State of South Dakota Seed Certification Board or its legal successors.

(m) "Table stock potatoes" means and includes all potatoes not included within the definition of "seed potatoes."

§ 797.2 *Administrative body — (a) Establishment and membership.* A South Dakota Potato Committee, consisting of seven producer members, is hereby established. For each member of the committee, there shall be an alternate member, who shall have the same qualifications as the member.

(b) *Initial committee.* The initial members and alternates of the committee shall be selected by the Secretary for a term of office ending on June 30, 1948, and until their successors are selected and qualified. Such members and alternates may be selected by the Secretary from lists of nominees supplied by producer groups or associations operating in and representative of producers in the production area.

(c) *Term of office.* The term of office of members and alternates of the Committee shall begin on the first day of July or the date of qualification, whichever is later, and continue until the end of the then current fiscal year and until their successors are selected and have qualified.

(d) *Nominations.* Except for initial members and alternates of the committee,

nominations for membership may be determined by:

(1) *Assembled meetings.* Elections may be conducted in assembled meetings of producers in each district to determine nominees for such district. Such election shall be conducted under the supervision of a chairman and a secretary designated by the committee in accordance with the provisions of Roberts' Rules of Order; or

(2) *Mail voting.* Election of nominees may be effected by the producers of each district by written ballot forwarded or presented to the teller designated by the committee. Each ballot form shall have printed thereon the date on which such ballot must be in the hands of the teller to be counted and ballots received after such date shall not be counted. Ballots not presented to the teller in person by the voter must be enclosed in an envelope with the voter's name and address indicated thereon. The notice of election attached to such ballot form may contain a list or lists of candidates sponsored for election by a group or groups of producers.

The committee shall determine the most desirable and convenient method, aforesaid, of electing nominees for each district, thereafter appointing indicated officials to conduct such elections. Such committee determinations shall be conveyed to interested producers by means of newspaper stories, mail, or such other means of communication deemed adequate by the committee. Nominees shall be elected, through use of forms provided by the committee, by June 10th of each year and lists thereof certified by appropriate election officials (either chairman and secretary or teller depending on the method of election) shall be forwarded via the committee to the Secretary by June 15th of each year.

(e) *Voting.* Each producer shall be eligible to cast one vote for each of the designated number of nominees in the district in which he qualifies as such producer, which vote can not be cumulated for any one nominee. A producer qualifying thereas in more than one district shall elect the district in which he chooses to exercise his voting rights.

(f) *Districts.* The production area is divided into four districts, identified, described and with nominee representation as follows:

District Number, Description, and Nominees

1. Codington and Deuel Counties:
4 for members.
4 for alternates.
2. Clark County:
6 for members.
6 for alternates.
3. Hamlin and Kingsbury Counties:
2 for members.
2 for alternates.
4. Brown and Day Counties:
2 for members.
2 for alternates.

(g) *Selection and qualification of members.* Except for the initial committee, the Secretary shall select two members and two alternates from nominees submitted from District No. 1, three members and three alternates from the nominees submitted by District No. 2, and one member and one alternate from the nominees submitted by each of the

remaining Districts. If nominations are not supplied to the Secretary within the time and in the manner specified in paragraph (d) of this section, the Secretary may, without regard to nominations, select the members and alternates of the committee, which selection shall be on the basis of the representation provided herein. Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

(h) *Vacancies.* To fill any vacancy occasioned by the failure of any person selected as a member or alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate member, a successor for his unexpired term may be selected by the Secretary. Such selections, if made, shall be on the basis of substitute representation for the producers of the District involved.

(i) *Obligations.* Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds, together with all books and records, in his possession, to his successor in office or to a trustee designated by the Secretary and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor or trustee full title to all of the property, funds, and claims vested in such member pursuant hereto: *Provided*, That the provisions hereof shall apply to alternate members in possession of funds, property, books or records, or participating in the receipt or disbursement of funds.

(j) *Alternate members.* An alternate member of the committee shall act in the place and stead of the member for whom he is alternate during such member's absence. In the event of death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified.

(k) *Procedure.* (1) Four members of the committee shall constitute a quorum, and any action of the committee shall require four concurring votes.

(2) The committee may provide for meeting by telephone, telegraph, or other means of communication, and any vote cast at such a meeting shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held all votes shall be cast in person: *Provided, further*, That the committee shall hold an annual assembled meeting during the last two weeks of March in each year, the exact time, place and date to be determined by the committee.

(l) *Members expenses and compensation.* The members of the committee and their respective alternates when acting as members, may be reimbursed for expenses necessarily incurred by them in performance of their duties and in the exercise of their powers hereunder, and shall receive compensation at a rate to be determined by the committee, which rate shall not exceed \$5.00 for each day

or portion thereof, spent in attendance at meetings of the committee.

(m) *Powers.* The committee shall have the following powers:

(1) To administer the provisions hereof in accordance with its terms.

(2) To make rules and regulations to effectuate the terms and provisions hereof.

(3) To receive, investigate, and report to the Secretary complaints of violations of the provisions hereof.

(4) To recommend to the Secretary amendments hereto.

(n) *Duties.* It shall be the duty of the committee:

(1) To act as intermediary between the Secretary and any producer or handler.

(2) To keep minutes, books and records which clearly reflect all of the acts and transactions of the committee and such minutes, books and records shall be subject to examination at any time by the Secretary.

(3) To investigate the growing, shipping and marketing conditions with respect to potatoes and to assemble data in connection therewith.

(4) To furnish to the Secretary such available information as he may request.

(5) To select a chairman and such other officers as may be necessary, and to adopt such rules and regulations for conduct of its business as it may deem advisable.

(6) At the beginning of each fiscal year, to submit to the Secretary a budget of its expenses for such fiscal year, together with a report thereon.

(7) To cause the books of the committee to be audited by a competent accountant at least once each fiscal year, and at such other times as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant hereto, and a copy of each such report shall be furnished to the Secretary.

(8) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the salaries and define the duties of each such person.

(9) To confer with other Marketing Agreement and Order Committees in other States and areas.

§ 979.3 Expenses and assessments—

(a) *Expenses.* The committee is authorized to incur such expenses as the Secretary finds may be necessary to carry out the functions of the committee pursuant to the provisions hereof during each fiscal year. The funds to cover such expenses shall be acquired by levying assessments as hereinafter provided.

(b) *Assessment.* (1) Each handler who first handles potatoes which are regulated, shall, with respect to the potatoes so handled by him, pay to the committee such handler's pro rata share of the expenses which the Secretary finds will be necessarily incurred by the committee for its maintenance and functioning during each fiscal year. Such assessment share shall be due and payable when the committee bills the handler therefor. Such handler's pro rata share of such expenses shall be equal

to the ratio between the total quantity of potatoes handled by him as the first handler thereof, during the applicable fiscal year, and the total quantity of potatoes handled by all handlers, as the first handlers thereof during the same fiscal year. The Secretary shall fix the rate of assessment to be paid by such handlers.

(2) At any time during or after a fiscal year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expense of the committee. Such increase shall be applicable to all potatoes handled during the given fiscal year. In order to provide funds to carry out the functions of the committee, handlers may make advance payment of assessments.

(c) *Accounting.* (1) If, at the end of a fiscal year, it shall appear that assessments collected are in excess of expenses incurred, each handler entitled to a proportionate refund of the excess assessments shall be credited with such refund against the operations of the following fiscal year, unless he demands payment thereof, in which event such sums shall be paid to him.

(2) The committee may, with the approval of the Secretary, maintain in its own name, or in the name of its members, a suit against any handler for the collection of such handler's pro rata share of the expenses of the committee.

§ 979.4 Regulation—(a) *Marketing policy.* At the beginning of each fiscal year, the committee shall prepare and submit to the Secretary a report setting forth its proposed policy for the marketing of potatoes during such fiscal year. In the event it becomes advisable to deviate from such marketing policy, because of changed demand and supply conditions, the committee shall formulate a new marketing policy and shall submit a report thereon to the Secretary. The committee shall notify producers and handlers of the contents of such reports.

(b) *Recommendations for regulations.* (1) It shall be the duty of the committee to investigate the supply and demand conditions for grade, size and quality of potatoes of all varieties. Whenever the committee finds that such conditions make it advisable to regulate the shipment of particular grade, size and quality of potatoes of any or all varieties during any period, it shall recommend to the Secretary the particular grade, size and quality of any or all varieties thereof deemed advisable to be shipped during such period.

(2) In determining the grade, size, and quality of potatoes of all varieties deemed advisable to be regulated in view of the prospective demand therefor, the committee shall give due consideration to the following factors: (i) Market prices, including prices by grade, size and quality of potatoes of all varieties for which regulation is recommended; (ii) potatoes on hand in the market areas as manifested by supplies en route and on track at the principal markets; (iii) available supply, quality, and condition of potatoes in the production area; (iv) supplies from competitive areas and re-

gions producing potatoes; (v) the trend and level of consumer income, and (vi) other relevant factors.

(c) *Issuance of regulations.* Whenever the Secretary shall find, from the recommendations and information submitted by the committee, or from other available information, that to limit the shipment of potatoes to particular grade, size and quality of any or all varieties thereof would tend to effectuate the declared policy of the act, he shall so limit the shipments of potatoes during a specified period. Any specific regulation may be made applicable to any variety or varieties of potatoes, different regulations may be applied in any fiscal year to different varieties, and different regulations may be applied in any fiscal year to table stock potatoes, on the one hand, and to seed potatoes on the other hand. One or more varieties of either table stock or seed potatoes may be regulated in any fiscal year without regulation of the remaining varieties. The Secretary shall notify the committee of any such regulation and the committee shall give reasonable notice thereof to handlers.

(d) *Inspection and certification.* During any period in which the Secretary has regulated the shipment of potatoes pursuant to this section, each handler shall, prior to making each shipment of potatoes, cause each shipment to be inspected by an authorized representative of the Federal-State Inspection Service. Promptly thereafter, each handler shall submit to the committee a copy of the inspection certificate issued thereon.

(e) *Exemptions.* (1) The committee shall adopt and announce, subject to the approval of the Secretary, the procedural rules pursuant to which certificates of exemption will be issued to producers.

(2) The committee shall issue certificates of exemption to any producer who furnishes adequate evidence to the said committee that by reason of a regulation issued pursuant to this section he will be prevented from having as large a proportion of potatoes shipped during the remainder of the shipping season, as the average of all producers. Such certificates of exemption shall grant an opportunity for such producer to have as large a proportion of his potatoes shipped as the average of all producers.

(3) If any producer is dissatisfied with the certificate of exemption granted or denied to him pursuant to an application, said producer may file an appeal with the committee. Such an appeal must be taken promptly after the issuance of the certificate of exemption or denial from which the appeal is taken. Any producer filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all available evidence, and make a final determination concerning the certificate of exemption to be granted or the denial thereof. The committee shall notify the appellant of the final determination and shall furnish the Secretary with a copy of the appeal and a statement of considerations involved in making the final determination.

(4) The Secretary shall have the right to modify, change, alter, or rescind any

procedural rules and any exemptions granted or denied pursuant to this section.

(5) Records shall be maintained by the committee and a weekly report furnished to the Secretary showing the applications for exemptions received, exemptions granted, exemptions denied, and shipments made under exemptions.

§ 979.5 *Regulation of surplus*—(a) *Recommendation.* It shall be the duty of the committee to investigate supply and demand conditions of potatoes. Whenever the committee finds that a surplus of potatoes exists, it shall determine the extent of such surplus of potatoes or of any grade, size or quality thereof. If it is deemed advisable, the committee shall recommend the control and disposition of surplus potatoes and plans for equalizing the burden of surplus elimination or control among the producers and handlers thereof under uniform rules established by the committee and approved by the Secretary.

(b) *Issuance of regulations.* (1) Whenever the Secretary finds from the recommendations and information submitted by the committee, or from other available information, that the control and disposition of surplus potatoes will tend to effectuate the declared policy of the act, he shall control and dispose of such surplus potatoes and shall further provide for equalizing the burden of such surplus elimination or control among producers and handlers thereof. Such control and disposition, in any fiscal year, may be applied, where the facts so warrant, either to table stock or to seed potatoes, or both: *Provided*, That different controls and dispositions may be utilized, in any fiscal year, for table stock potatoes, on the one hand, and seed potatoes, on the other hand, and for the various varieties of table stock and seed potatoes.

(2) At any time during which the Secretary provides for the control and disposition of surplus potatoes, the committee is authorized to enter into contracts or agreements with any person, agency, or organization, for the purpose of facilitating the disposal of surplus potatoes. The Secretary may designate the committee as an agency to assist in and to effectuate the elimination or control of surplus potatoes under any governmental program.

§ 979.6 *Limitation of regulations.* Nothing contained herein shall authorize any limitation of the shipment of potatoes for any of the following purposes: (a) Potatoes shipped for consumption by charitable institutions or for distribution by relief agencies; (b) potatoes shipped for manufacturing or conversion into byproducts, except for manufacturing or conversion into specified products recommended by the committee for regulation and approved by the Secretary therefor; (c) potatoes shipped by the producer thereof from the point or place of production to the nearest customary grading, storing, or loading point for the purpose of having said potatoes graded, stored, or loaded for shipment; and (d) upon recommendation of the committee and approval of the Secretary, potatoes

shipped for livestock feed or for other specified purposes. The Secretary shall give prompt notice to the committee of any approval issued by him under the provisions of this section. The committee may prescribe adequate safeguards to prevent potatoes shipped for the purposes stated above from entering the current of interstate commerce or directly burdening, obstructing, or affecting such commerce contrary to the provisions hereof, which safeguards shall include Federal-State inspection provided by § 979.4 (d) and the payment of a pro rata share of expenses provided by § 979.3; *Provided*, That such inspection and payment of expenses may be required at different times than otherwise specified by the aforesaid sections. The committee shall issue Certificates of Privilege for shipment of potatoes effected or to be effected under the provisions of this section and shall make a weekly report to the Secretary showing the number of certificates applied for, the number of bushels of potatoes covered by such applications, the number of certificates denied and granted, the number of bushels of potatoes shipped under duly issued certificates, and such other information as may be requested by the Secretary. The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

§ 979.7 *Reports.* Upon the request of the committee, every handler shall furnish to the committee, in such manner and at such time as may be prescribed, such information as will enable the committee to exercise its powers and perform its duties hereunder. The Secretary shall have the right to modify, change, or rescind requests for any reports pursuant to this section.

§ 979.8 *Compliance.* Except as provided herein, no handler shall ship potatoes, the shipment of which has been prohibited by the Secretary in accordance with provisions hereof, and no handler shall ship potatoes except in conformity to the provisions hereof.

§ 979.9 *Right of the Secretary.* The members of the committee (including successors and alternates) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 979.10 *Effective time and termination*—(a) *Effective time.* The provisions hereof shall become effective at such time as the Secretary may declare above his signature attached hereto, and shall continue in force until terminated in one of the ways hereinafter specified.

(b) *Termination.* (1) The Secretary may, at any time, terminate the pro-

visions hereof by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(2) The Secretary may terminate or suspend the operations of any or all of the provisions hereof whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(3) The Secretary shall terminate the provisions hereof at the end of any fiscal year whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal year, have been engaged in the production for market of potatoes; *Provided*, That such majority has, during such year, produced for market more than fifty percent of the volume of such potatoes produced for market; but such termination shall be effected only if announced on or before June 30 of the then current fiscal year.

(4) The provisions hereof shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

(c) *Proceedings after termination.* (1) Upon the termination of the provisions hereof, the then functioning members of the committee shall continue as trustees, for the purpose of liquidating the affairs of the committee, of all funds and the property then in the possession of, or under control of the committee, including claims for any funds unpaid, or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(2) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant hereto.

(3) Any person to whom funds, property, or claims have been transferred, or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 979.11 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination hereof, or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen, or which may thereafter arise in connection with any provision hereof, or any regulation issued hereunder, or (b) release or extinguish any violation hereof, or of any regulation issued hereunder, or (c) affect or impair any rights or remedies of the Secretary, or of any other persons with respect to any such violation.

§ 979.12 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue hereof shall cease upon the termination hereof, except with respect to acts done under and during the existence hereof.

§ 979.13 *Agents.* The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions hereof.

§ 979.14 *Derogation.* Nothing contained herein is, or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 979.15 *Personal liability.* No member or alternate of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty.

§ 979.16 *Separability.* If any provision hereof is declared invalid, or the applicability thereof to any persons, circumstances, or thing is held invalid, the validity of the remainder hereof, or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 979.17 *Amendments.* Amendments hereto may be proposed from time to time, by the committee or by the Secretary.

[F. R. Doc. 47-9933; Filed, Nov. 6, 1947; 8:48 a. m.]

17 CFR, Part 9791

HANDLING OF IRISH POTATOES GROWN IN EASTERN SOUTH DAKOTA PRODUCTION AREA

ORDER DIRECTING THAT REFERENDUM BE CONDUCTED AMONG PRODUCERS OF IRISH POTATOES GROWN IN EASTERN SOUTH DAKOTA AND DESIGNATING AGENT TO CONDUCT SUCH REFERENDUM: DETERMINATION OF REPRESENTATIVE PERIOD

Pursuant to the applicable provisions of Public Act No. 10, 73d Congress (May 12, 1933) as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.) it is hereby directed that a referendum be conducted among the producers who, during the 1947 crop year (which period for the purposes of such referendum is hereby determined to be (1) the period March 1, 1947 to October 15, 1947, and (2) a representative period) were engaged in production of Irish potatoes in the Eastern South Dakota production area, to determine whether such pro-

ducers favor the issuance of an order regulating the handling of Irish potatoes grown in the Eastern South Dakota production area, a copy of which is attached to the decision¹ of the Secretary of Agriculture filed simultaneously herewith; and R. E. Keller, In Charge, MW Marketing Field Office, Fruit and Vegetable Branch 610 South Canal Street, Chicago 7, Illinois, is hereby designated agent of the Secretary of Agriculture to perform the following functions:

(1) Conduct said referendum in accordance with the rules and limitations herein set forth, giving an opportunity to each producer of Irish potatoes grown in the Eastern South Dakota production area to cast his ballot relative to the aforesaid proposed order on forms furnished by the Secretary of Agriculture. A cooperative association of such producers, bona fide engaged in marketing such Irish potatoes may vote for the producers who are members of, stockholders in, or under contract with, such cooperative association, and the vote of such cooperative association shall be considered as the vote of all such producers.

(2) Determine the time of commencement, duration, and termination of the period of the referendum: *Provided*, That the referendum shall be completed prior to December 6, 1947.

(3) Determine the necessary number of polling places, designate and announce such polling places, the area to be served by each polling place, and the hours during which such polling places will be open: *Provided*, That all such polling places shall remain open not less than four (4) daylight hours during each day announced.

(4) In addition to the designation and announcement of polling places, if the said agent determines it advisable (a) conduct meetings of producers and arrange for balloting thereat, in which event such balloting shall continue until all of the producers who are present and desire to do so have an opportunity to vote, and (b) arrange for balloting by mail, in which event the said agent shall designate the place or places to which such ballots shall be mailed and shall give notice of the last date on which such ballots must be placed in the mail.

(5) Give public notice of the time and place of balloting and of each meeting authorized herein (a) by posting a notice thereof, at least three (3) days in advance of the first voting day, at each polling place and at each meeting place, (b) by issuing a press release in newspapers having general circulation in the Irish potato producing districts (as such districts are defined in the aforesaid amended order) of Eastern South Dakota producing area, and (c) by such other means as the said agent may deem advisable.

(6) Appoint any of the employees of the Production and Marketing Administration, United States Department of Agriculture, in the State of South Dakota, or any of the employees of the County Agricultural Conservation Association of Brown, Clark, Codington, Day, Deuel, Hamlin, or Kingsbury counties in

the State of South Dakota, or any other person deemed necessary or desirable, to assist the said agent in carrying out his duties hereunder: *Provided*, That any such aforesaid employees and other persons so appointed shall serve without compensation and may be authorized, by the said agent, to perform the following functions in accordance with the rules set forth herein:

(a) Give public notice of the referendum in the manner specified herein.

(b) Preside as a poll officer at a designated polling place.

(c) Distribute ballots to producers and receive such ballots after they are cast.

(d) Secure the name and address of each person casting a ballot, and inquire into the eligibility of each such person to vote.

(e) Forward to R. E. Keller, Room 912, New Custom House, 610 South Canal Street, Chicago 7, Illinois, immediately after the close of the referendum, the following: (i) the name and address of each producer who cast a ballot at the polling place designated for such poll officer and whose ballot was received by such officer; (ii) all of such ballots which were received by the officer, together with his certificate that the ballots forwarded are all of the ballots cast and received during the referendum period at the designated polling place; (iii) a statement showing the time and place the notice of referendum was posted and, if the notice was mailed to producers, the mailing list showing the names and addresses to which the notice was mailed and the time of such mailing; and (iv) a detailed statement explaining the method used in giving publicity to such referendum.

(7) Upon receipt by the designated agent of all ballots cast and such other documents as are required pursuant hereto, the ballots shall be canvassed by him and the results of the referendum shall be forwarded with the ballots and other required documents to the Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C.

The Fruit and Vegetable Branch shall prepare and submit to the Secretary a detailed report covering the results of the referendum, the manner in which the referendum was conducted, the extent and kind of public notice given, and all other information pertinent to the full analysis of the referendum and its results.

The designated agent and any appointee pursuant hereto shall not refuse to accept a ballot submitted or cast; but should they, or any of them, deem that a ballot should be challenged for any reason, or if such ballot shall be challenged by any other person, said agent or appointee shall endorse, above his signature, on the back of said ballot a statement to the effect that such ballot was challenged, by whom challenged, and the reasons therefor; and the number of such challenged ballots shall be stated when they are forwarded as provided herein.

All ballots shall be treated as confidential and the contents thereof shall not

¹ See F. R. Doc. 47-9933, *supra*.

be divulged except to (1) the Secretary of Agriculture, (2) his agent designated herein to conduct such referendum, (3) members of the Production and Marketing Administration, United States Department of Agriculture, (4) members of the Office of the Solicitor, United States Department of Agriculture, and (5) such other persons as the Secretary may hereafter designate.

The Director of the Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, is hereby authorized to prescribe additional instructions, not inconsistent with the rules and the limitations herein set forth, to govern the procedure to be followed by the said agent and appointees in conducting said referendum.

Done at Washington, D. C., this 3d day of November 1947.

[SEAL] CLINTON P. ANDERSON,
Secretary of Agriculture.

[F. R. Doc. 47-9935; Filed, Nov. 6, 1947;
8:49 a. m.]

CIVIL AERONAUTICS BOARD

[14 CFR, Part 202]

FILING OF REPORTS BY IRREGULAR AIR CARRIERS AND NON-CERTIFICATED CARGO CARRIERS

NOTICE OF PROPOSED RULE MAKING

OCTOBER 31, 1947.

In accordance with section 4 (a) of the Administrative Procedure Act, notice is hereby given that the Civil Aeronautics Board has under consideration the amendment of § 202.1 (c) of the Economic Regulations (14 CFR 202.1 (c) as amended) for the purpose of requiring the filing of reports by Irregular Air Carriers and Non-certificated Cargo Carriers.

The requirements of § 202.1 are not at present applicable to Irregular Air Carriers or Non-certificated Air Cargo Carriers, since that section does not express-

ly so provide (see §§ 292.1 (c) (1) (v) and 292.5 (e) (5)). The proposed amendment would expressly require reports of certain specified data and statistics set forth in the attached proposed amendment to be reported by such carriers. In the case of Irregular Air Carriers, such reports would be in addition to the operational reports already required by § 292.1 (c) (6).

The amendment is proposed under the authority of sections 205 (a) and 407 (a) of the Civil Aeronautics Act of 1938, as amended (52 Stat. 984, 994; 49 U. S. C., 425, 485).

Interested persons may participate in the making of the proposed rule by submitting comments in writing. Communications should be addressed to the Secretary, Civil Aeronautics Board, Washington 25, D. C., for receipt not later than November 25, 1947.

Proposed amendment of § 202.1 (c) of the Economic Regulations is as follows:

§ 202.1 *Forms of reports of financial and operating statistics.* * * *

(c) *Irregular Air Carriers and Non-certificated Cargo Carriers.* A report of certain financial and operating data, as hereinafter specified, shall be submitted to the Board by each Irregular Air Carrier and Non-certificated Cargo Carrier, within 45 days after the termination of the period covered therein. Except in the case of the Balance Sheet, items attributable to operations performed under the Letter of Registration shall be differentiated from items attributable to other operations insofar as practicable. Such report shall be certified correct by a responsible officer of the reporting carrier, and shall be prepared in accordance with accepted practices, but need not comply with the requirements of CAB Forms 41 and 41 (a) (Report of Financial and Operating Data for Air Carriers). The several periods to be covered, and the data to be reported for a particular period, shall be as follows:

(1) For the calendar year 1947, and for each succeeding calendar year, each

such carrier shall submit the following data:

(i) A tabulation indicating NC number, type, cost, date of acquisition, and depreciation policy followed for each airplane owned or rented.

(ii) A statement as to each operation outside the scope of the Letter of Registration (e. g., contract flights, flying schools, airport services, et cetera), describing the nature and extent of each operation and specifying the approximate proportion of the carrier's total activities which is contributed by each operation.

(2) For the calendar year 1947 and thereafter, commencing with the calendar quarter ending March 31, 1948, for each succeeding calendar quarter, each such carrier, except an Irregular Air Carrier utilizing small aircraft as prescribed in § 292.1 (c) (2) of the Economic Regulations, shall submit a report containing the following data:

(i) Balance Sheet as of end of reporting period.

(ii) Profit and Loss Statement.

(iii) Number of flight personnel and ground personnel during the payroll period ending nearest the middle of the last month of the reporting period.

(iv) Revenue aircraft hours and miles and total aircraft hours and miles.

(v) Number of revenue passengers and tons of revenue cargo carried.

(vi) Revenue passenger miles and revenue ton-miles.

(3) For the calendar year 1947, and for each succeeding calendar year, each Irregular Air Carrier utilizing small aircraft as prescribed in § 292.1 (c) (2) of the Economic Regulations shall submit a report containing the data prescribed in subparagraph (2) of this paragraph.

(Secs. 205 (a) 407 (a), 52 Stat. 984, 994; 49 U. S. C. 425, 485)

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 47-9930; Filed, Nov. 6, 1947;
9:11 a. m.]

NOTICES

FEDERAL POWER COMMISSION

[Docket Nos. G-200, G-207]

PANHANDLE EASTERN PIPE LINE CO. ET AL.

ORDER EXTENDING EFFECTIVE DATE OF SUPPLEMENTAL RATE SCHEDULES

NOVEMBER 3, 1947.

City of Detroit, Michigan, and County of Wayne, Michigan v. Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, Docket No. G-200. In the matter of Panhandle Eastern Pipe Line Company, Michigan Gas Transmission Corporation and Illinois Natural Gas Company, Docket No. G-207.

Notice is hereby given that, on November 3, 1947, the Federal Power Commission issued its order entered October 31, 1947, extending effective termination

date of Panhandle Eastern Pipe Line Company's supplemental rate schedules from November 1, 1947, to December 1, 1947, in the above-designated matters.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 47-9902; Filed, Nov. 6, 1947;
8:52 a. m.]

[Docket No. G-938]

NORTHERN NATURAL GAS CO.

NOTICE OF FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND APPROVING ABANDONMENT AND REMOVAL OF FACILITIES

NOVEMBER 5, 1947.

Notice is hereby given that, on November 4, 1947, the Federal Power Commission issued its findings and order

entered November 4, 1947, issuing certificate of public convenience and necessity and approving abandonment and removal of facilities in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 47-9951; Filed, Nov. 6, 1947;
8:49 a. m.]

[Docket No. G-953]

NORTHERN NATURAL GAS CO.

NOTICE OF FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NOVEMBER 5, 1947.

Notice is hereby given that, on November 4, 1947, the Federal Power Commis-

sion issued its findings and order entered November 4, 1947, issuing certificate of public convenience and necessity in the above entitled matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 47-9952; Filed, Nov. 6, 1947;
8:49 a. m.]

[Docket No. IT-6093]

PENNSYLVANIA POWER & LIGHT CO.

NOTICE OF APPLICATION

NOVEMBER 4, 1947.

Notice is hereby given that on October 31, 1947, an application was filed with the Federal Power Commission, pursuant to section 203 of the Federal Power Act, by Pennsylvania Power & Light Company, a corporation organized under the laws of the Commonwealth of Pennsylvania and doing business in said State with its principal business office at Allentown, Pennsylvania, seeking an order authorizing the acquisition by merger of the facilities of its wholly-owned subsidiary, the Mauch Chunk Heat, Power and Electric Light Company, a corporation organized under the laws of the Commonwealth of Pennsylvania; or, in the alternative, an order disclaiming jurisdiction over the proposed transaction; all as more fully appears in the application on file with the Commission.

Any person desiring to be heard, or to make any protest with reference to said application should, on or before the 24th day of November, 1947, file with the Federal Power Commission, Washington 25, D. C., a petition or protest in accordance with the Commission's rules of practice and procedure.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 47-9953; Filed, Nov. 6, 1947;
8:49 a. m.]

[Project No. 16]

NIAGARA FALLS POWER CO.

NOTICE OF APPLICATION FOR AMENDMENT OF
LICENSE

NOVEMBER 5, 1947.

Public notice is hereby given pursuant to the provisions of the Federal Power Act (16 U. S. C. 791-825r) that The Niagara Falls Power Company of Niagara Falls, New York, has made application for amendment of license for Project No. 16 at Niagara Falls, New York to install five 10,000 KVA alternating current generators and appurtenant equipment in Schoellkopf Station No. 3-A.

Any protest against the approval of this application or request for hearing thereon, with the reasons for such protest or request, and the name and address of the party or parties so protesting or requesting, should be submitted before December 8, 1947 to the Federal Power Commission at Washington, D. C.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 47-9954; Filed, Nov. 6, 1947;
8:49 a. m.]

[Docket No. G-917]

WISCONSIN SOUTHERN GAS CO.

ORDER FIXING DATE OF HEARING

Upon consideration of the application filed on July 11, 1947, and the supplement thereto filed on September 18, 1947, by Wisconsin Southern Gas Company (Applicant) a Wisconsin corporation having its principal place of business at Burlington, Wisconsin, for (1) a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, as amended, authorizing the acquisition, construction and operation of certain natural-gas facilities, subject to the jurisdiction of the Commission, and (2) an order by the Commission under section 7 (a) of the Natural Gas Act requiring Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business at Chicago, Illinois, to extend its facilities, to establish connection with the facilities which Applicant proposes to acquire and construct, and to sell natural gas to Applicant for distribution in southeastern Wisconsin, all as fully described in such application on file with the Commission and open to public inspection, public notice thereof having been given, including publication in the FEDERAL REGISTER on July 31, 1947 (12 F. R. 5242) and the response filed on August 6, 1947, and the supplement thereto filed on October 1, 1947, by Natural Gas Pipeline Company of America.

The Commission orders that:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's rules of practice and procedure (as amended June 16, 1947), a public hearing be held commencing on November 19, 1947, at 10:00 a. m. (e. s. t.) in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue, N. W., Washington, D. C., concerning the matters involved and the issues presented by the application and other pleadings in this proceeding.

(B) Interested State commissions may participate as provided by Rules 8 and 37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Date of issuance: November 5, 1947.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 47-9955; Filed, Nov. 6, 1947;
8:49 a. m.]

INTERSTATE COMMERCE COMMISSION

[S. O. 396, Special Permit 338]

RECONSIGNMENT OF APPLES AT CHICAGO,
ILL.

Pursuant to the authority vested in me by paragraph (f) of the first ordering paragraph of Service Order No. 396 (10 F. R. 15008), permission is granted for any common carrier by railroad subject to the Interstate Commerce Act:

To disregard entirely the provisions of Service Order No. 396 insofar as it applies to the reconsignment at Chicago, Ill., October 21, 1947, by Jack Carl Co., of car WFE 65377, apples, now on the Chicago Produce Terminal to Ben B. Schwartz, Detroit, Mich. (PM)

The waybill shall show reference to this special permit.

A copy of this special permit has been served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and notice of this permit shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D. C., this 30th day of October 1947.

HOMER C. KING,
Director,
Bureau of Service.

[F. R. Doc. 47-9910; Filed, Nov. 6, 1947;
8:49 a. m.]

[S. O. 396, Special Permit 340]

RECONSIGNMENT OF APPLES AT CHICAGO,
ILL.

Pursuant to the authority vested in me by paragraph (f) of the first ordering paragraph of Service Order No. 396 (10 F. R. 15008), permission is granted for any common carrier by railroad subject to the Interstate Commerce Act:

To disregard entirely the provisions of Service Order No. 396 insofar as it applies to the reconsignment at Chicago, Ill., October 24, 1947, by Jack Carl Co., of car FGE 37358, apples, now on the Chicago Produce Terminal to Kroger Co., Columbus, Ohio. (NYC) (N&W Dely.)

The waybill shall show reference to this special permit.

A copy of this special permit has been served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and notice of this permit shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D. C., this 30th day of October 1947.

HOMER C. KING,
Director,
Bureau of Service.

[F. R. Doc. 47-9911; Filed, Nov. 6, 1947;
8:49 a. m.]

[S. O. 396, Special Permit 341]

RECONSIGNMENT OF APPLES AT
MINNEAPOLIS, MINN.

Pursuant to the authority vested in me by paragraph (f) of the first ordering

paragraph of Service Order No. 396 (10 F. R. 15008) permission is granted for any common carrier by railroad subject to the Interstate Commerce Act:

To disregard entirely the provisions of Service Order No. 396 insofar as it applies to the reconsignment at Minneapolis, Minn., October 27, 1947, by N. W. Fruit Exchange, of car FGE 59099, apples, now on the Great Northern to N. W. Fruit Exchange, to Kansas City, Mo. (CGW)

The waybill shall show reference to this special permit.

A copy of this special permit has been served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and notice of this permit shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D. C., this 31st day of October 1947.

HOMER C. KING,
Director
Bureau of Service.

[F. R. Doc. 47-9912; Filed, Nov. 6, 1947;
8:49 a. m.]

[S. O. 396, Special Permit 342]

RECONSIGNMENT OF GRAPES AT CHICAGO, ILL.

Pursuant to the authority vested in me by paragraph (f) of the first ordering paragraph of Service Order No. 396 (10 F. R. 15008) permission is granted for any common carrier by railroad subject to the Interstate Commerce Act:

To disregard entirely the provisions of Service Order No. 396 insofar as it applies to the reconsignment at Chicago, Ill., October 29, 1947, by Chicago Fruit & Vegetable Exchange of car PFE 61579, grapes; now on the Chicago Produce Terminal to Gimmerman Bros., Baltimore, Md. (PRR)

The waybill shall show reference to this special permit.

A copy of this special permit has been served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and notice of this permit shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D. C., this 31st day of October 1947.

HOMER C. KING,
Director
Bureau of Service.

[F. R. Doc. 47-9913; Filed, Nov. 6, 1947;
8:49 a. m.]

[S. O. 396, Special Permit 343]

RECONSIGNMENT OF GRAPES AT CHICAGO, ILL.

Pursuant to the authority vested in me by paragraph (f) of the first ordering paragraph of Service Order No. 396 (10 F. R. 15008) permission is granted for any common carrier by railroad subject to the Interstate Commerce Act:

To disregard entirely the provisions of Service Order No. 396 insofar as it applies to the reconsignment at Chicago, Ill., October 28, 1947, by Joe Pantallo, of cars PFE 96686 and PFE 41363, grapes, now on the Santa Fe to James Lerza, Jersey City, N. J. (Erle)

The waybill shall show reference to this special permit.

A copy of this special permit has been served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and notice of this permit shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D. C., this 31st day of October 1947.

HOMER C. KING,
Director
Bureau of Service.

[F. R. Doc. 47-9914; Filed, Nov. 6, 1947;
8:50 a. m.]

[S. O. 396, Special Permit 344]

RECONSIGNMENT OF APPLES AT CHICAGO, ILL.

Pursuant to the authority vested in me by paragraph (f) of the first ordering paragraph of Service Order No. 396 (10 F. R. 15008) permission is granted for any common carrier by railroad subject to the Interstate Commerce Act:

To disregard entirely the provisions of Service Order No. 396 insofar as it applies to the reconsignment at Chicago, Ill., October 29, 1947, by Auster Co., of car FGE 11346, apples, now on the Chicago Produce Terminal to Max Shapiro, Washington, D. C. (PRR)

The waybill shall show reference to this special permit.

A copy of this special permit has been served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and notice of this permit shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D. C., this 31st day of October 1947.

HOMER C. KING,
Director
Bureau of Service.

[F. R. Doc. 47-9915; Filed, Nov. 6, 1947;
8:50 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File Nos. 54-72, 59-9, 59-66]

STANDARD POWER AND LIGHT CORP. ET AL.

MEMORANDUM OPINION AND ORDER SETTING DATE FOR HEARING AND RESERVING JURISDICTION

In the matter of Standard Power and Light Corporation, Standard Gas and Electric Company, and Subsidiary Companies thereof, respondents, File No. 59-9; and Standard Gas and Electric Company, File Nos. 54-72 and 59-66.

On August 8, 1941 we issued our Findings and Opinion and accompanying order¹ pursuant to section 11 (b) (1) of the Public Utility Holding Company Act of 1935 ("act") in which we directed Standard Gas and Electric Company ("Standard") a registered holding company, and a subsidiary of Standard Power and Light Corporation, also a registered holding company, to dispose of its interests in all of its subsidiaries other than the securities of Philadelphia Company and Public Utility Engineering and Service Corporation. In that order we reserved the right to enter other and further orders from time to time requiring Standard to take such additional action as might be necessary for compliance with section 11 (b) (1) of the act.

In 1943 Standard filed a plan pursuant to section 11 (e) of the act and at the time hearings were scheduled, we instituted proceedings pursuant to section 11 (b) (2) of the act.² In that connection we stated our tentative conclusions that, among other things, there were reasonable grounds to believe that the corporate structure or continued existence of certain companies in the Standard system might unduly and unnecessarily complicate the structure of that system and that voting power in Standard's system might be unfairly and inequitably distributed among security holders. In addition, the plan itself provided for the elimination of the outstanding common stock of Standard from any participation in the allocation of new securities. On May 31, 1944 we issued our findings and opinion³ in which we stated that we were unable to approve the plan in the form as submitted. At that time we indicated the nature of the amendments to the plan which would satisfy the requirements of the act.

An amended plan was then filed by Standard, which plan as further amended was approved by us on November 15, 1944.⁴ In approving this amended plan which provided for the recapitalization of Standard on a one-stock basis, the new stock to be allocated in a ratio of 95% for the prior preference stock and 5% for the \$4 preferred stock, we found that the plan was necessary to effectuate the provisions of section 11 (b) (2) of the act as well as those of section 11 (b) (1). In connection with our findings

¹ Standard Gas and Electric Company, 9 S. E. C. 862, Holding Company Act Release No. 2929.

² Holding Company Act Release No. 4198.

³ Holding Company Act Release No. 5070.

⁴ Holding Company Act Release No. 5430.

under section 11 (b) (2) of the act, we noted that the plan had the effect of bringing about a considerable simplification of the over-complicated structure of Standard and that it opened the way for the removal of the system's violation of the "great grandfather" provision of section 11 (b) (2) relating thereto. In our or consolidation of Standard and Philadelphia Company, which would eliminate one or the other as a corporate entity. In addition we found that there existed an unfair and inequitable distribution of voting power among the security holders of Standard and that the plan was necessary to effectuate the provisions of section 11 (b) (2) relating thereto. In our order of approval, we provided:

(5) That jurisdiction be and it hereby is reserved to the Commission to entertain such further proceedings, to make such supplemental findings and to take such further action as it may deem appropriate in connection with the amended plan, the transactions incident thereto and the consummation thereof and, in the event the plan be not consummated, to enter such further orders as it may deem appropriate under sections 11 (b), 11 (d), 15 (f) and 20 (a) of the act.⁵

Thereafter, we applied to the District Court of the United States for the District of Delaware to enforce the plan. The District Court in an opinion dated March 2, 1945, rejected the plan on a point of law not presently relevant but the Court specifically approved the Commission's finding that the plan was necessary to meet the requirements of section 11 (b) (2) of the act regarding the distribution of voting power.⁶ In September 1945 the holding of the District Court on the aforementioned point of law was reversed and the plan was remanded to the District Court for further proceedings by the Circuit Court of Appeals for the Third Circuit.⁷

After the decision of the Circuit Court of Appeals, as a result of which the case was remanded to the District Court, certain stockholders filed a motion with the District Court alleging that the market value of the various securities proposed to be distributed to the note and debenture holders had increased and that under the changed circumstances the plan was unfair to the stockholders. At that time, Standard also contended that the plan was unfair and it filed a motion requesting the Court to dismiss the plan and to permit the Company to call its outstanding notes and debentures for redemption in accordance with the various indentures under which they were issued. The District Court held that Standard had the right to call its outstanding notes and debentures for redemption and remanded the case to us for further proceedings consistent with its order.⁸

On February 26, 1946 we issued our findings, opinion and order permitting Standard to issue \$51,000,000 principal amount of bank loan notes for the purpose of redeeming (together with treasury cash) all of its outstanding notes and

debentures. In approving the issuance of these bank loan notes we adverted to our prior holding in 1944⁹ in which we had found an overcomplicated structure and that there was an unfair distribution of voting power and in that connection we found that:

• • • Standard ought not to have any securities outstanding other than a single class of common stock because of the large amount of senior securities of its subsidiaries in relation to their assets and earning power. The proposed issuance of bank notes is warranted only as a temporary expedient in order to permit the prompt retirement of presently outstanding debt, and to facilitate the disposition of subsidiary securities required in order to comply with the requirements of section 11 (b). The program contemplates the expeditious sale of the subsidiary companies' securities and the proceeds of these sale will be used to retire the bank notes. Under these special circumstances, we conclude that the issuance of the proposed bank notes, as a step in the reorganization of Standard, is not detrimental to the public interest or the interests of investors or consumers and meets the requirements of section 7.¹⁰

Under date of May 9, 1947, we issued our memorandum opinion and order authorizing an extension of maturity from May 10, 1947 until July 10, 1947 of certain of the aforesaid bank loan notes, and in that opinion we made the following remarks concerning progress in compliance with our order of August 8, 1941 and in retirement of the bank loans authorized in February 1946:

We are by no means satisfied that the management of this company has proceeded as diligently as possible toward the liquidation of this bank loan. Had more aggressive steps been taken toward the sale of assets, the proposed extension now sought might well have been unnecessary. • • •

It is apparent that the program as now outlined is not consistent with the company's representations to the court and to the Commission, at the time the bank loans were approved. In view of the fact that the bank loans were approved by the Commission only upon the basis of very definite representations by the company as to the prompt retirement of these loans, it is our view that if there is to be any change in the company's program as then represented, such change should be permitted only upon the basis of convincing evidence. • • •

In spite of our repeated admonitions and the Company's representations, Standard continues to have outstanding \$24,750,000 of bank loan notes and has effected only partial compliance with our order of divestment entered in 1941. While we recognize that there have been changes since our findings made in connection with the amended plan, we are nevertheless of the view that the complexities in Standard's system continue to exist and that there still remains an unfair and inequitable distribution of voting power. As of August 31, 1947 the \$7 prior preference stock with a liquidation preference of \$36,834,000 had arrearages of dividends aggregating \$35,109,704, the \$6 prior preference stock with an aggregate liquidating preference of \$10,-

000,000 had arrearages totaling \$8,170,000, and the \$4 preferred stock with a liquidating preference of \$37,872,100 had dividend arrearages aggregating \$43,931,636.

Under the Certificate of Incorporation of Standard the board of directors now consists of 8 members. Of the present membership, 2 are elected by the prior preference stock voting as a single class; 2 are elected by the holders of \$4 preferred stock voting as a class; and 4 are elected by the holders of common stock voting as a class. Standard Power and Light Corporation as the holder of approximately 53% of the common stock of Standard presently elects half of Standard's board. The Certificate of Incorporation of Standard Power and Light Corporation provides for two classes of common stock—common stock and common stock, Series B. There are 1,320,000 shares of common stock and 110,000 shares of common stock, Series B outstanding.¹¹ The common stock is authorized to elect a majority of the directors of Standard Power and Light Corporation. However, the common stock, Class B is empowered to vote the common stock of Standard held by Standard Power and Light Corporation for the purpose of electing a majority of the directors of Standard.¹²

Turning again to Standard, we note that despite the fact that the amended plan was remanded to us in December 1945, no amendment to that plan was ever filed. It was not until October 3, 1947 that the management made any attempt to present any plan which would reflect the change in conditions existing since the retirement of the notes and debentures.

On the latter date, a new plan approved by vote of four directors elected on behalf of the \$4 preferred stock and the common stock of Standard was filed in the name of the Company. This plan provides for three so-called "immediate"

¹¹ The Common Stock, Series B on October 23, 1947 sold on the New York Curb Exchange at 1½ per share. Thus the total market value of the 110,000 outstanding shares was \$178,750.

¹² In 1935 Standard went into voluntary reorganization proceedings under section 77B of the Bankruptcy Act and as a result of the reorganization the voting rights of Standard were redistributed. Under the plan of reorganization the Common Stock of Standard is now entitled to elect four members of Standard's board. Because of conflicting views as to the right of the two classes of Common Stock of Standard Power and Light Corporation to vote the Common Stock of Standard held by Standard Power and Light Corporation, an action was begun in 1946 in the Court of Chancery of the State of Delaware in and for New Castle County by certain stockholders of Standard Power and Light Corporation and of Standard contesting the validity of the election at Standard's previous annual meeting of the four persons declared to have been elected as directors of Standard in behalf of the Common Stock of Standard Power and Light Corporation.

In order to terminate the aforementioned litigation, a compromise was reached and the Board of Directors of Standard Power and Light Corporation agreed upon four individuals who were then elected as members of the board of Standard.

⁵ *Ibid.*, p. 80.

⁶ 59 F. Supp. 274, 282-3.

⁷ In the Matter of Standard Gas and Electric Company, 151 F. 2d 326.

⁸ 63 F. Supp. 374 (1945).

⁹ Holding Company Act Release No. 5430.

¹⁰ Holding Company Act Release No. 6435, pp. 8-9.

¹¹ Holding Company Act Release No. 7395, pp. 3-4.

steps and three additional "ultimate" steps. The three "immediate" steps are:

Step I. Standard will file with the Securities and Exchange Commission * * * as promptly as possible a declaration under Rule U-44 seeking authorization to offer for sale through underwriters the common stock of Wisconsin Public Service Corporation * * * Such sale will be promptly carried out, subject to the right of the board of directors to defer temporarily the offering if in the board's judgment unduly disturbed or depressed market conditions prevail at the time of the offering.

The net proceeds of the sale of the common stock of Wisconsin Public Service Corporation will be utilized to prepay Standard's outstanding bank loans. All other treasury cash, to the extent deemed feasible by the board, as well as earnings received during the period, will also be applied to the reduction of the bank loans. It is believed that the total of the aforementioned payments will either completely eliminate the bank loans or reduce them to a relatively insignificant balance * * *

Step II. The shares of common stock of Oklahoma Gas and Electric Company * * * and Louisville Gas and Electric Company, a Kentucky corporation * * * owned by Standard will be distributed to the holders of Standard's \$7 and \$8 prior preference stock in cancellation of all or such part of the claims of the holders of \$7 and \$8 prior preference stock as is consonant with the standards of fairness and equity * * * Prior to the completion of the hearings * * * the precise allocations proposed to be made to the holders of each share of \$7 and \$8 prior preference stock of Standard will be filed by Standard in the form of a supplement to this plan. To the extent that any portion of the claims of the holders of the prior preference stock remains unsatisfied under the foregoing procedure, such claims will be satisfied by other assets of Standard, including possibly common stock of Philadelphia Company or underlying assets thereof; all in such manner as shall be specified in a supplement to this plan * * *

Step III. Standard will divest itself of its ownership of Public Utility Engineering and Service Corporation and other of its miscellaneous assets, in accordance with declarations, applications or notices to be hereafter filed with the Commission.

The remaining three steps are summarized in the plan as follows:

(4) transfer to the Philadelphia Company of such liquid assets as are not required by Standard in order to assist Philadelphia Company to provide for the retirement of the latter's outstanding senior securities;

(5) simplification of the structure of Philadelphia Company, disposition of assets and any other action necessary to bring Philadelphia Company and its entire system into full compliance with the provisions of both sections 11 (b) (1) and 11 (b) (2) of the act;

(6) consolidation and merger of Standard with Philadelphia Company, or dissolution of either or both companies, or such other measures as are found necessary or appropriate to effectuate the provisions of section 11 of the act.

Our examination of the new plan indicates that there is sufficient doubt, due to the vagueness and lack of specificity in the terms in which the plan is written, whether the document may be considered a "plan" within the meaning of section 11 (e) of the act.¹⁴ Accordingly we deem

it appropriate to require that Standard show cause, at the hearing being ordered herein, why the alleged plan should not be dismissed.

On October 23, 1947, John P. Wagner, John H. Harmon, Edward M. Goemans and Jouett Shouse, acting as a Protective Committee for Standard Gas and Electric Company prior preference stock, \$7 and \$8 cumulative ("Committee") filed a petition with us requesting (1) that we forthwith enter an order requiring Standard and its management to show cause why an order should not be entered pursuant to sections 12 (e) and 20 (a) of the act prohibiting the solicitation of proxies or the holding of any meeting of stockholders for the election of directors; (2) that we forthwith apply to a court, as provided in section 11 (d) of the act, to enforce compliance with our order of August 8, 1941 and that we request said court to take exclusive jurisdiction and possession of Standard and its assets wherever located; (3) that we further request said court to constitute and appoint the Commission itself as sole trustee to hold and administer the assets of Standard; (4) that we promptly propose in said enforcement proceedings that sufficient of the assets of Standard be sold forthwith to make possible a final payment of all principal and interest on the outstanding bank loan notes and that dividend payments on the prior preference stock be resumed immediately thereafter; (5) that we forthwith issue a subpoena requiring the production of copies of the report alleged to have been prepared for and submitted to Standard by certain engineers and to make such report available to the committee; (6) that we promptly convene hearings pursuant to section 11 (d) of the act for the purpose of determining a fair and equitable reorganization plan; (7) that the plan filed by Standard on October 3, 1947 be dismissed on grounds of ineffectiveness and incompleteness without any hearings being held thereon; and (8) that we grant such other or additional relief as may be just and appropriate in the premises.

On October 28, 1947, Standard filed a motion requesting dismissal of the petition filed by the Committee.

It has come to our attention that there has been considerable dissension among the members of Standard's board and that resignations of present members of the management have either been tendered or are imminent. Furthermore, our files disclose that the next annual meeting of the stockholders of Standard for the election of directors is scheduled to be held on December 3, 1947 and that the management intends to solicit proxies for such election. As we have indicated above, Standard Power and Light Corporation, the parent of Standard, owns over half of the common stock and a substantial amount of the prior preference stock of Standard. In view of the impending changes in the management of Standard, new contracts, relationships and transactions between affiliates have been undertaken, and we believe it reasonable to assume that more may be forthcoming. Under these circumstances, we deem it appropriate pursuant to the provisions of section 12 (f)

of the act to examine into existing contracts and relationships among affiliates in this holding company system and to require, except as we may subsequently otherwise order herein, that Standard and Standard Power and Light Corporation and their affiliates shall not enter into new contracts, relationships or transactions not otherwise unlawful under the act with any company in the same holding company system or with any affiliate of a company in such holding company system, or with any person who by reason of any such transaction would become such an affiliate, unless (1) there is given at least 10 days' notice to the Commission of intention to enter into new contracts, relationships or transactions, and (2) no notice shall have been given by the Commission within said 10-day period that a declaration should be filed with respect to the proposed transactions, or notice shall have been given by the Commission within said 10-day period that no declaration is required, or the Commission shall have permitted a declaration with respect thereto to have become effective. Moreover, in view of the foregoing, our order herein will also prohibit Standard Power and Light Corporation from voting any securities of Standard which it holds, pending our further order herein which will be entered upon the conclusion of the hearings being ordered herein.

In addition, under the circumstances of this case, some of which have been adverted to above, we are satisfied that, among other things, the rules of the Commission promulgated for the purpose of expediting solicitation of proxies in ordinary situations should not be applicable to the securities of Standard pending our further order. Therefore, pursuant to the provisions of section 12 (e) of the act, which gives us jurisdiction generally over the solicitation of proxies, and pursuant to the provisions of Rule U-100 (b) we are withdrawing the applicability of the provisions of Rule U-61 and we are directing that there be no solicitation of any authorization regarding any security of Standard except pursuant to a declaration which we have permitted to become effective.

We are also of the view that the circumstances of this case warrant the entry of an order requiring Standard to show cause why we should not enter an order pursuant to section 11 (b) (2) of the act requiring the liquidation and elimination of Standard as a corporate entity, or the recapitalization of Standard on the basis of a single class of stock, namely common stock.

It would appear that in the course of considering the matters before us, the scope of our inquiries and determinations may necessarily be broader than specifically set forth herein and may require action to be taken with all possible dispatch. Accordingly, any persons who desire to be further informed with respect to issues which may be raised for subsequent determination are advised to enter an appearance in the case as further notice will not be given except upon our specific order.

It is not intended that the hearing to be held shall encompass the question of the appropriateness of our taking action

¹⁴ See *Electric Bond and Share Company*, 11 S. E. C. 1148, 1219-1220 (1942) affirmed sub nom. *American Power & Light Company v. S. E. C.*, 329 U. S. 90 (1947).

pursuant to section 11 (d) of the act, to enforce compliance with our order of August 8, 1941, although, as indicated above, such action on our part has been requested by the Committee and opposed by the Company. We have had and still have under consideration the appropriateness of proceeding under section 11 (d) but we do not regard our determination in this respect to be properly the subject of a hearing. Rather, we deem it the intention of Congress to entrust such a move to the sound discretion of the Commission acting in its administrative capacity.

In view of the action taken or to be ordered hereafter, we do not deem it necessary or appropriate at this time to take formal action on the petition filed by the Committee or the motion to dismiss that petition filed by Standard.

Wherefore, *It is ordered*, Upon all the papers and proceedings heretofore had herein that a hearing shall be held on the 18th day of November, 1947 at 10:00 a. m., e. s. t., at the office of the Securities and Exchange Commission, 18th and Locust Streets, Philadelphia 3, Pennsylvania for the purposes hereinafter ordered. On such day the hearing room clerk in Room 318 will advise as to the room in which such hearing will be held.

It is further ordered, That at the hearing hereinbefore ordered Standard Gas and Electric Company shall show cause why the Commission should not enter an order pursuant to section 11 (b) (2) of the Public Utility Holding Company Act of 1935 requiring Standard Gas and Electric Company either to liquidate and dissolve, or to recapitalize on the basis of a single class of stock, namely common stock.

It is further ordered and notice is hereby given, That, pending said hearing and pending further order of the Commission after said hearing, all persons are prohibited from soliciting, or permitting the use of their names to solicit, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, any proxy, power of attorney, consent, or authorization regarding the voting of any security of Standard Gas and Electric Company, unless pursuant to a declaration which has become or shall have been permitted by the Commission to become effective.

It is further ordered, That at the hearing hereinbefore ordered Standard Gas and Electric Company shall show cause why the Commission should not enter an order dismissing the "Plan of Standard Gas and Electric Company pursuant to section 11 (e) of the Public Utility Holding Company Act of 1935," dated October 2, 1947.

It is further ordered and notice is hereby given, That at the hearing hereinbefore ordered evidence shall be adduced regarding contracts, relationships and transactions which have been entered into among affiliates in the Standard Power and Light Corporation holding company system and, except as we may subsequently otherwise order herein, that Standard Gas and Electric Company and Standard Power and Light Corporation and their affiliates shall not

enter into new contracts, relationships or transactions not otherwise unlawful under the act with any company in the same holding company system or with any affiliate of a company in such holding company system or with any person who by reason of any such transaction would become such an affiliate, unless (1) there is given at least 10 days' notice to the Commission of intention to enter into new contracts, relationships or transactions, and (2) no notice shall have been given by the Commission within said 10-day period that a declaration should be filed with respect to the proposed transaction, or notice shall have been given by the Commission within said 10-day period that no declaration is required, or the Commission shall have permitted a declaration with respect thereto to have become effective, and that pending further order of the Commission herein which shall be entered upon the conclusion of the hearings being ordered herein, Standard Power and Light Corporation be, and hereby is, prohibited from exercising any voting rights which it now has through ownership of securities of Standard Gas and Electric Company.

It is further ordered, That any interested person desiring to be heard or otherwise wishing to participate in said hearing should notify the Commission in the manner provided in Rule XVII of the Commission's rules of practice not later than 2 days prior to such hearing.

It is further ordered, That William W. Swift or any other officer or officers of the Commission, designated by it for that purpose, shall preside at the hearing on such matter. The officer so designated to preside at such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of the act and to a hearing officer under the Commission's rules of practice.

It is further ordered, That the Secretary of the Commission shall serve notice of said hearing by mailing a copy of this memorandum opinion and order by registered mail to all persons who have heretofore filed an appearance in these proceedings, to Standard Gas and Electric Company, Standard Power and Light Corporation, John P. Wagner, et al. as Protective Committee for Standard Gas and Electric Company prior preference stock, \$7 and \$6 cumulative, and that notice of said hearing be given to all other interested persons by general release of the Commission and by publication of this opinion and order in the FEDERAL REGISTER.

It is further ordered, That jurisdiction be and hereby is, reserved to separate either for hearing, in whole or in part, or for disposition, in whole or in part, any of the matters hereinbefore set forth or which may hereafter arise, or to take such other action as may appear appropriate in the premises or be necessary for the orderly, prompt, and economical disposition of the matters involved.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 47-9904; Filed, Nov. 6, 1947;
8:52 a. m.]

[File No. 70-1632]

INDIANA GAS & WATER CO., INC.

NOTICE OF FILING

At a regular session of the Securities and Exchange Commission held at its office in the City of Philadelphia, Pa., on the 30th day of October A. D. 1947.

Notice is hereby given that Indiana Gas & Water Company, Inc. ("Gas-Water"), a subsidiary of Public Service Company of Indiana, Inc. ("Public Service") which is a subsidiary of The Middle West Corporation, a registered holding company, has filed an application with this Commission pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935.

Notice is further given that any interested person may, not later than November 10, 1947, at 5:30 p. m., e. s. t., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request, the nature of his interest and the issues of fact or law raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 18th and Locust Streets, Philadelphia 3, Pennsylvania. At any time after November 10, 1947, said application, as filed or as amended, may be granted as provided in Rule U-23 of the rules and regulations promulgated under said act, or the Commission may exempt such transactions as provided in Rule U-20 (a) and Rule U-100 thereof.

All interested persons are referred to said application, which is on file in the office of this Commission, for a statement of the transactions therein proposed which are summarized below:

Gas-Water proposes to issue \$990,000 principal amount of its first mortgage bonds, 3% series, due November 1, 1972, and to sell such bonds at their face value equally to Aetna Life Insurance Company and New England Mutual Life Insurance Company.

The bonds will be issued under and secured by an indenture amending and supplementing the indenture securing the company's presently outstanding bonds. The company states that the proceeds from the sale of the bonds will be deposited with the indenture trustee and will be taken down against available net expenditures for bondable property as provided for in the indenture.

Fees and expenses to be incurred in connection with the proposed transactions are estimated by Gas-Water at \$14,489 and include a fee of \$2,100 for counsel for the purchasers and a fee of \$5,000 for The First Boston Corporation for its services in securing purchasers for the bonds.

Gas-Water states that the net proceeds from said sale, estimated at \$975,511, will be used for the purpose of (a) prepaying, without premium, two six-months promissory notes due February 12, 1948, in the aggregate amount of \$300,000 which were issued to pay part of the cost of the company's construction program, and (b) paying a portion

of the cost of the company's construction program.

The applicant states that the issue and sale of said bonds will be expressly authorized by the Public Service Commission of Indiana, the state commission of the State in which applicant is organized and doing business, and that a copy of the order of such commission will be filed herein by amendment.

The applicant requests exemption pursuant to the third sentence of section 6 (b) of the act with respect to the proposed transactions and claims exemption from the competitive bidding requirements of Rule U-50 by reason of paragraph (a) (4) thereof.

Applicant also requests that the order of the Commission granting said application become effective forthwith upon issuance.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 47-9903; Filed, Nov. 6, 1947;
8:52 a. m.]

[File No. 812-516]

MORRIS PLAN CORP. OF AMERICA ET AL.

NOTICE OF APPLICATION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pa., on the 3d day of November A. D. 1947.

In the matter of the Morris Plan Corporation of America, American General Corporation and Industrial Bank of Commerce of Albany et al., File No. 812-516.

Notice is hereby given that the Morris Plan Corporation of America (Morris Plan) has filed an application pursuant to section 17 (b) of the Investment Company Act of 1940 for an order of exemption from the provisions of section 17 (a) (3) of said act so as to permit certain employees of Morris Plan and of its affiliates to borrow money from time to time, subject to appropriate restrictions and limitations, from lending institutions controlled by Morris Plan.

The application discloses that Morris Plan controls, within the meaning of section 2 (a) (9) of the act, the following lending institutions: Industrial Bank of Commerce of Albany, The Bank of Georgia, Buffalo Industrial Bank, Pullman Trust & Savings Bank, State Bank of Blue Island, Standard State Bank, The Tennessee Valley Bank, Morris Plan Bank & Banking Company, First Industrial Loan Company of New Jersey, Industrial Bank of Commerce, The Charter Bank of Philadelphia, The Bank of Virginia, The Baden Bank of St. Louis, The Salem Morris Plan Company, Industrial Bank of Schenectady, Industrial Bank of Central New York, Union Trust Company, Industrial City Bank & Banking Co., Lowell Morris Plan Co., Manchester Morris Plan Bank, and The Morris Plan Co. of South Bend. Since Morris Plan is controlled by a registered investment company, American General

Corporation, persons employed by Morris Plan or by its affiliates, including the lending institutions, are prohibited under the provisions of section 17 (a) (3) of the act from borrowing money or other property from any company controlled by Morris Plan.

Morris Plan requests that persons employed by it or by its affiliates be exempted from the provisions of section 17 (a) (3) of the act to the extent that such persons may be permitted to borrow money from any of the lending institutions listed above subject to the following terms, conditions and limitations:

(1) Any person, not a director or officer, who has been employed full-time for at least six months by Morris Plan or by an affiliated company and who earns less than \$5,000 per annum shall be eligible to borrow from any one or more of the lending institutions an aggregate amount not in excess of the sum of the borrower's salary for the three month period immediately preceding the date of the loan; (2) each such loan shall be evidenced by a promissory note of the borrower in such form as the lender shall require and shall provide for payment in monthly installments within a period of twelve months from the date of the loan. The payments shall commence within 30 days from the date of the loan. The interest or discount rate charged shall not exceed the rate currently charged by the lender for comparable loans made to the general public; (3) the aggregate amount of all such loans outstanding at any one time as to any lending institution shall not exceed 1% of the aggregate capital, surplus and individual profits of the lending institution; and, (4) each lending institution shall file with the Commission such reports and other information respecting the proposed transactions as the Commission may from time to time require.

The application is on file in the offices of the Commission in Philadelphia, Pennsylvania. All interested persons are referred to said application for a more detailed statement of the matters of fact and law therein asserted.

Notice is further given that an order granting the application, upon such conditions as the Commission may see fit to impose, may be issued by the Commission at any time after November 12, 1947, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in Rule N-5 of the rules and regulations promulgated under the act. Any interested person may, not later than November 10, 1947, at 5:30 p. m., submit in writing to the Commission his views or any additional facts bearing upon this application or the desirability of a hearing thereon, or request the Commission in writing that a hearing be held thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 18th and Locust Streets, Philadelphia 3, Pennsylvania, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reason for such request, and the issues of fact

or law raised by the application which he desires to contravert.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 47-9905; Filed, Nov. 6, 1947;
8:53 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 926; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11081.

[Vesting Order 9874]

CLEMENTINE ROSALIE HOLZMANN

In re: Estate of Clementine Rosalie Holzmänn, deceased. File D-28-11404; E. T. sec. 15647.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Olga Holzmänn, Gerhardt Holzmänn, Erich Holzmänn, Anna Holzmänn, Rudolph Holzmänn and Erna Holzmänn, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany)

2. That the children, names unknown of Gerhardt Holzmänn; children, names unknown of Erich Holzmänn; children, names unknown of Anna Holzmänn; children, names unknown of Rudolph Holzmänn and children, names unknown of Erna Holzmänn, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

3. That all right, title, interest and claim of any kind or character whatsoever of the persons identified in subparagraphs 1 and 2 hereof, and each of them, in and to the estate of Clementine Rosalie Holzmänn, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany);

4. That such property is in the process of administration by Benjamin Clarke, as Executor, acting under the judicial supervision of the Probate Court of Cook County, Illinois;

and it is hereby determined:

5. That to the extent that the persons named in subparagraph 1 hereof and the children, names unknown of Gerhardt Holzmänn; children, names unknown of Erich Holzmänn; children, names unknown of Anna Holzmänn; children, names unknown of Rudolph Holzmänn and children, names unknown of Erna Holzmänn, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being

deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 24, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 47-9921; Filed, Nov. 6, 1947;
8:56 a. m.]

[Vesting Order 9875]

JOHN HUBER

In re: Estate of John Huber, deceased. File D-28-12007; E. T. sec. 16189.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Mary Bassing, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany).

2. That all right, title, interest and claim of any kind or character whatsoever of the person named in subparagraph 1 hereof in and to the estate of John Huber, deceased, is property payable or deliverable to, or claimed by, the aforesaid national of a designated enemy country (Germany).

3. That such property is in the process of administration by Land Title Bank and Trust Company of Philadelphia, Pennsylvania, as executor, acting under the judicial supervision of the Orphans' Court of Montgomery County, Norristown, Pennsylvania;

and it is hereby determined:

4. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 24, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 47-9922; Filed, Nov. 6, 1947;
8:56 a. m.]

[Vesting Order 9879]

THOMAS PREHN

In re: Trust under the will of Thomas Prehn, deceased. File No. D-28-3749; E. T. sec. 9899.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Johanna Prehn Baumann, Friedrich Prehn, Michael Eberhard Prehn, Elfriede Garthe, nee Prehn, Annemarie Prehn Grimm, Hanna Holtz (nee Grimm) Ernst Holtz, Rotraut Holtz, Johann Holtz, Adolf Grimm, Monika Grimm, Renate Grimm, Irmgard Prehn Behm, Hans Behm, Gunther Behm, Karl Behm, also known as Carl Behm; Ilse Behm, Anna Quehl, also known as Anni Prehn Quehl; Elizabeth Quehl, Ursula Quehl, Annerose Quehl, George Wilhelm Prehn, Elizabeth Prehn, also known as Elisabeth Prehn; Carl George Prehn, Rosemarie Prehn, Friedrich Prehn, Johannes Prehn, Thomas Prehn, Reinhard Prehn, Friedrich Prehn, Thomas Prehn, Heinrich Prehn, Friedegarde Prehn, Thomas Prehn, Ferdinand Brockmann, Wilhelm Brockmann, Renate Brockmann, Anna Brockmann, Olga Jessel, Karl Friedrich Jessel, Klaus Jessel, Margaret Jessel, Wolf Gunther Jessel, Charlotte Ramspeck (nee Jessel), Ingeborg Peters Schluter, Klaus Schluter, Eberhard Peters, and Kathe Baumann, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany).

2. That the children and descendants, names unknown, of Friedrich Prehn, deceased; the children and descendants, names unknown, of Carl Prehn, deceased, except Michael Eberhard Prehn and Miquel Eberhard Prehn, who are residents of Argentina; the children and descendants, names unknown, of Ludwig Prehn, deceased; the children and descendants, names unknown, of Auguste Prehn Brockmann, deceased; the children and descendants, names unknown, of Johanna Prehn Baumann; and the children and descendants, names unknown, of Elisabeth Prehn, also known as Anna Elizabeth Prehn, deceased, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany).

3. That all right, title, interest and claim of any kind or character whatsoever

of the persons identified in subparagraphs 1 and 2 hereof, and each of them, in and to the Trust created under the Will of Thomas Prehn, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany).

4. That such property is in the process of administration by Oscar C. Seebass, as Trustee of the Trust created under the Will of Thomas Prehn, deceased, acting under the judicial supervision of the Passaic County Orphans' Court, Paterson, New Jersey;

and it is hereby determined:

5. That to the extent that the above named persons and the children and descendants, names unknown, of Friedrich Prehn, deceased; the children and descendants, names unknown, of Carl Prehn, deceased, except Michael Eberhard Prehn and Miquel Eberhard Prehn, who are residents of Argentina; the children and descendants, names unknown, of Ludwig Prehn, deceased; the children and descendants, names unknown, of Auguste Prehn Brockmann, deceased, the children and descendants, names unknown, of Johanna Prehn Baumann, and the children and descendants, names unknown, of Elisabeth Prehn, also known as Anna Elizabeth Prehn, deceased, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 24, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 47-9923; Filed, Nov. 6, 1947;
8:57 a. m.]

[Vesting Order 10092]

FRANK A. KOES ET AL.

In re: Stock owned by and debts owing to Frank A. Kobs and others. F-28-317-D-1, F-28-25191-D-1, F-28-976-D-1.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Frank A. Kobs, whose last known address is Mine Husing 3, Ank-

lam, Pomerania, Germany. Pauline Schmid, whose last known address is Phalzgrafenweiten, Germany; and Bertha Catharina Hoyer, Dr. Peter Ferdinand Hell, Catharina Maria Hell, Anna Elisabeth Kelting and Maria Wilhelmine Stahl, each of whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany),

2. That the property described as follows:

a. Twenty-nine (29) shares of \$100 par value capital stock of American Telephone and Telegraph Company, 195 Broadway, New York, New York, a corporation organized under the laws of the State of New York, evidenced by the certificates whose numbers are listed below, registered in the names of the persons listed below in the amounts set forth opposite said names as follows:

Certificate No.	Name in which registered	Number of shares
UN43945	Frank A. Kobs	27
NY34703	Miss Pauline Schmid	1
KN76251	do	1

together with all declared and unpaid dividends thereon, and

b. Those certain debts or other obligations owing to Frank A. Kobs and Pauline Schmid by American Telephone and Telegraph Company, 195 Broadway, New York, New York, in the respective amounts of \$40.77 and \$3.02, as of December 31, 1945, arising out of the sales of certain subscription rights issued by said American Telephone and Telegraph Company, together with any and all accruals thereto and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by Frank A. Kobs and Pauline Schmid, the aforesaid nationals of a designated enemy country (Germany)

3. That the property described as follows:

a. That certain debt or other obligation of American Telephone and Telegraph Company, 195 Broadway, New York, New York, in the amount of \$393.84, as of December 31, 1945, arising out of certain unpaid dividends on shares of capital stock of said American Telephone and Telegraph Company formerly registered in the name of Franz Hell, Estate, together with any and all accruals thereto and any and all rights to demand, enforce and collect the same, and

b. That certain debt or other obligation of American Telephone and Telegraph Company, 195 Broadway, New York, New York, in the amount of \$48.32, as of December 31, 1945, arising out of the sale of certain subscription rights issued by said American Telephone and Telegraph Company in connection with shares of its capital stock formerly registered in the name of Franz Hell, Estate, together with any and all accruals thereto and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by Bertha Catharina Hoyer, Dr. Peter Ferdinand Hell, Catharina Maria Hell, Anna Elisabeth Kelting and Maria Wilhelmine Stahl, the aforesaid nationals of a designated enemy country (Germany)

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on October 9, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 47-9924; Filed, Nov. 6, 1947;
8:57 a. m.]

[Vesting Order 10010]

Mrs. LOTTE SPRINGORUM

In re: Stock owned by Mrs. Lotte Springorum. F 28-5586 A-1, F 28-5586 A-2, F 28-5586 D-1.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Mrs. Lotte Springorum, whose last known address is Westphalia, Germany, is a resident of Germany and a national of a designated enemy country (Germany)

2. That the property described as follows:

a. Nineteen hundred and twenty-three (1923) shares of no par value common, class A capital stock of North American Rayon Corporation, 261 Fifth Avenue, New York, New York, a corporation organized under the laws of the State of Delaware, evidenced by certificates numbered 3067/84 and 03115/6, registered in the name of Shepperd & Co., and presently in the custody of Swiss American Corporation, 30 Pine Street, New York, together with all declared and unpaid dividends thereon,

b. Twelve hundred and forty-two (1242) shares of no par value common,

class B capital stock of North American Rayon Corporation, 261 Fifth Avenue, New York, a corporation organized under the laws of the State of Delaware, evidenced by certificates numbered BC567/78 and BO457, registered in the name of Shepperd & Co., and presently in the custody of Swiss American Corporation, 30 Pine Street, New York, together with all declared and unpaid dividends thereon,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Mrs. Lotte Springorum, the aforesaid national of a designated enemy country (Germany),

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on October 9, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 47-9925; Filed, Nov. 6, 1947;
8:57 a. m.]

[Vesting Order CE 415]

COSTS AND EXPENSES INCURRED IN CERTAIN ACTIONS OR PROCEEDINGS IN CERTAIN OHIO, MICHIGAN, AND MINNESOTA COURTS

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it having been found:

1. That each of the persons named in Column 1 of Exhibit A, attached hereto and by reference made a part hereof, was a person within the designated enemy country or the enemy-occupied territory identified in Column 2 of said Exhibit A opposite such person's name;

2. That it was in the interest of the United States to take measures in connection with representing each of said persons in the court or administrative action or proceeding identified in Column 3 of said Exhibit A opposite such person's

name, and such measures having been taken;

3. That, in taking such measures in each of such actions or proceedings, costs and expenses have been incurred in the amount stated in Column 4 of said Exhibit A opposite the action or proceeding identified in Column 3 of said Exhibit A. Now, therefore, there is hereby vested in the Attorney General of the United States, to be used or otherwise dealt with in the interest of and for the benefit of

the United States, interests in the property which said persons obtain or are determined to have as a result of said actions or proceedings in amounts equal to the sums stated in Column 4 of said Exhibit A.

The term "designated enemy country" as used herein shall have the meaning prescribed in section 10 of Executive Order 9193, as amended. The term "enemy-occupied territory" as used

herein shall have the meaning prescribed in Rules of Procedure, Office of Alien Property, § 501.6 (8 CFR, Cum. Supp., 503.6)

Executed at Washington, D. C., on October 31, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

Column 1 Name	Column 2 Country or territory	Column 3 Action or proceeding	Column 4 Sum vested	Column 1 Name	Column 2 Country or territory	Column 3 Action or proceeding	Column 4 Sum vested
Ida Rauber.....	Italy.....	<i>Item 1</i> Estate of Theodora Bole, also known as Theodor Bole, also known as Teodora Bole, deceased. Probate Court, Cuyahoga County, State of Ohio.	\$13.00	Mary Basso.....	Italy.....	<i>Item 10</i> Estate of Salvatore Basso, also known as Sam Basso, deceased. Probate Court, Jefferson County, Ohio.	\$43.00
Alberto Rauber.....	do.....	<i>Item 2</i> Same.....	13.00	Giuseppe Scardino.....	do.....	<i>Item 11</i> Estate of Pietro Scardino, deceased. Probate Court, Wayne County, Mich.	15.00
Luigi Bole.....	do.....	<i>Item 3</i> Same.....	6.00	Caterina Scardino.....	do.....	<i>Item 12</i> Same.....	15.00
Olga Bole.....	do.....	<i>Item 4</i> Same.....	6.00	Anna Scardino.....	do.....	<i>Item 13</i> Same.....	15.00
Drago Bole.....	do.....	<i>Item 5</i> Same.....	6.00	Luisa Carinief.....	do.....	<i>Item 14</i> Estate of Angelo Carinief, deceased. Probate Court, Wayne County, Mich.	10.00
Maria Bole.....	do.....	<i>Item 6</i> Same.....	6.00	Giuseppe Carinief and other children of Angelo Carinief, deceased. Names unknown.	do.....	<i>Item 15</i> Same.....	20.00
Charles Vincen.....	do.....	<i>Item 7</i> Estate of Jules Roberts, deceased. Probate Court, Wayne County, State of Michigan.	70.00	Mrs. Anna Rehrenbauer.....	Austria.....	<i>Item 16</i> Estate of Ramiro A. Wurm-heringer, deceased. Probate Court, Brown County, State of Minnesota.	13.00
Menichina Biondi.....	do.....	<i>Item 8</i> Estate of Benedetto Biondi, deceased. Probate Court, Lucas County, Ohio.	58.00	Rt. Reverend Florio Lugano.....	Italy.....	<i>Item 17</i> Same.....	44.00
Eno Biondi.....	do.....	<i>Item 9</i> Same.....	72.00	St. Olivetan Order.....	Austria.....	<i>Item 18</i> Same.....	22.00

[F. R. Doc. 47-9927; Filed, Nov. 6, 1947; 8:57 a. m.]

HEBERLEIN PATENT CORP.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Heberlein Patent Corp., New York City, N. Y., 1979 and A-152 to A-156 inclusive; Property described in Vesting Order No. 16 (7 F. R. 4400, June 11, 1942), relating to United States Letters Patent Nos. 2,225,661; 2,252,039; 2,254,283; 2,261,156; and 2,263,730. Any interests and rights relating to said property created in Faerberel Aktiengesellschaft Vormals E. Stolte Nachfolger and Wm. Missy (and its successor, Faerberel-Gesellschaft Flores & Co. Vormals Stolte-Missy), by virtue of an agreement dated October

30, 1936, as amended on March 23, 1939; and any interests and rights relating to said property created in Deutsche Hydricwerke A. G. and Bohme Fettchemie A. G. by virtue of an agreement dated February 27, 1939, are expressly reserved. Property described in Vesting Order No. 141 (7 F. R. 8311, October 14, 1942), relating to United States Letters Patent No. 2,103,520.

Executed at Washington, D. C., on November 3, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 47-9929; Filed, Nov. 6, 1947; 8:57 a. m.]

[Vesting Order CE 410]

COSTS AND EXPENSES INCURRED IN CERTAIN ACTIONS OR PROCEEDINGS IN CERTAIN OHIO, MICHIGAN, AND MISSOURI COURTS

Under the authority of the Trading With the Enemy Act, as amended, Execu-

tive Order 9193, as amended, and Executive Order 9783, and pursuant to law, after investigation, it having been found:

1. That each of the persons named in Column 1 of Exhibit A, attached hereto and by reference made a part hereof, was a person within the designated enemy country or the enemy-occupied territory identified in Column 2 of said Exhibit A opposite such person's name;

2. That it was in the interest of the United States to take measures in connection with representing each of said persons in the court or administrative action or proceeding identified in Column 3 of said Exhibit A opposite such person's name, and such measures having been taken;

3. That as a result of such action or proceeding each of said persons obtained or was determined to have the property particularly described in Column 4 of said Exhibit A opposite such person's name;

4. That such property is in the possession or custody of, or under the control of, the person described in Column

NOTICES

5 of said Exhibit A opposite such property.

5. That, in taking such measures in each of such actions or proceedings, costs and expenses have been incurred in the amount stated in Column 6 of said Exhibit A opposite such action or proceeding;

Now, therefore, there is hereby vested in the Attorney General of the United States, to be used or otherwise dealt with

in the interest of and for the benefit of the United States, interests in the property in the possession or custody of, or under the control of, the persons described in column 5 of said Exhibit A in amounts equal to the sums stated in Column 6 of said Exhibit A.

The term "designated enemy country" as used herein shall have the meaning prescribed in section 10 of Executive Order 9193, as amended. The term "en-

emy-occupied territory" as used herein shall have the meaning prescribed in Rules of Procedure, Office of Alien Property, § 501.6-18 CFR, Cum. Supp., 503.6)

Executed at Washington, D. C., on October 31, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

EXHIBIT A

Column 1 Name	Column 2 Country or territory	Column 3 Action or proceeding	Column 4 Property	Column 5 Depository	Column 6 Sum vested
<i>Item 1</i>					
Elsa Ceccarelli	Italy	Estate of Enrico Ceccarelli, deceased. Probate Court, Summit County, State of Ohio #49408.	\$331.15	Hon. Dean F. May, Probate Judge of Summit County, Akron, Ohio.	\$29.00
<i>Item 2</i>					
Ersilia Ceccarelli Arcangeli	do	Same	331.15	do	29.00
<i>Item 3</i>					
Stella Ceccarelli	do	Same	331.14	do	28.00
<i>Item 4</i>					
Antonio Ceccarelli	do	Same	331.14	do	28.00
<i>Item 5</i>					
Assunta Ceccarelli	do	Same	331.14	do	28.00
<i>Item 6</i>					
Silvia Ceccarelli	do	Same	331.14	do	28.00
<i>Item 7</i>					
Pietro Ceccarelli	do	Same	331.14	do	28.00
<i>Item 8</i>					
Clara Baillet Greinschl	do	Estate of Christiana Baillet, deceased. Probate Court for the County of Kent, Mich., File No. 51051.	295.00	The Michigan Trust Co., executor of the estate of Christiana Baillet, deceased, corner Pearl and Ottawa Sts., Grand Rapids, Mich.	16.00
<i>Item 9</i>					
Gullia Baillet Cucini	France	Same	295.00	do	16.00
<i>Item 10</i>					
Margherita Barelli	Italy	Same	295.00	do	16.00
<i>Item 11</i>					
Elvira Chiappini Paolett	do	Same	295.00	do	16.00
<i>Item 12</i>					
Luisa Baillet Coata	do	Same	98.34	do	6.00
<i>Item 13</i>					
Givilio (Giulio) Baillet	do	Same	98.34	do	6.00
<i>Item 14</i>					
Sofia Baillet	do	Same	98.33	do	5.00
<i>Item 15</i>					
Elvira Baillet	do	Same	98.33	do	5.00
<i>Item 16</i>					
Luigi Baillet	France	Same	98.33	do	5.00
<i>Item 17</i>					
Ida Baillet Fuggi	do	Same	98.33	do	5.00
<i>Item 18</i>					
Eloise Fiamingo	Italy	Paul O. Kinkel, trustee of William Resor Estate vs. Laura Foster Robbins, and others in Court of Common Pleas, County of Hamilton, State of Ohio, No. 92101.	262.34	First National Bank of Cincinnati, trustee for Eloise Fiamingo, Cincinnati, Ohio.	49.00
<i>Item 19</i>					
Gulseppe Fiamingo	do	Same	381.53	John B. Hollister, trustee for Gulseppe Fiamingo, c/o Taft Stettinius & Hollister, 603 Dixie Terminal Bldg., Cincinnati, Ohio.	72.00
<i>Item 20</i>					
Maria Grammatico	do	Estate of Carmelo Stellitano, also known as Luigi Grammatico, deceased. Probate Court, Wayne County, State of Michigan, No. 333094.	Approx. \$5,319.46	L. O. Kelly, administrator, c/o Kelly, Kelly and Kelly, 2372 National Bank Bldg., Detroit, Mich.	36.00
<i>Item 21</i>					
Venara Russo Coco	do	Estate of Rosario Russo, deceased. Probate Court of City of St. Louis, Mo., No. 96040.	\$389.48	Mr. Joseph F. Callahan, Esq., 705 Chestnut St., St. Louis 1, Mo.	51.00
<i>Item 22</i>					
Angelo Russo	do	Same	389.47	do	51.00
<i>Item 23</i>					
Carnella Russo	do	Same	389.47	do	51.00

[Vesting Order 10015]

TARO YOSHIKAWA

In re: Stock owned by Taro Yoshikawa.
D-39-12607-A-1.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Taro Yoshikawa, whose last known address is Japan, is a resident of Japan and a national of a designated enemy country (Japan)

2. That the property described as follows: Those certain shares of stock described in Exhibit A, attached hereto and by reference made a part hereof, and registered in the names of the persons set forth in Exhibit A, together with all declared and unpaid dividends thereon, subject however, to any and all lawful liens in favor of McDonnell & Co., 120 Broadway, New York 5, New York, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Japan),

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the prop-

erty described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on October 9, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

Name and address of issuing corporation	State of incorporation	Number of shares	Certificate Nos.	Par value	Type of stock	Registered owner
The Baldwin Locomotive Works, Eddystone, Pa.	Pennsylvania	100	PC2943	-----	-----	McDonnell & Co., 120 Broadway, New York 5, N. Y. Do.
Western Union Telegraph Co., 60 Hudson St., New York 13, N. Y.	New York	100	A23009	No par	Class A	
Pittsburgh United Corp.	-----	100 100	NY2423 NY2427	-----	-----	Taro Yoshikawa. Do.

[F. R. Doc. 47-5926; Filed, Nov. 6, 1947; 8:57 a. m.]

